A/CONF.117/16 (Vol. I)

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS

Vienna, 1 March–8 April 1983

OFFICIAL RECORDS

Volume I

Summary records of the plenary meetings
and of the meetings of the Committee of the Whole

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UNITED NATIONS
New York, 1995

INTRODUCTORY NOTE

The *Official Records of the United Nations Conference on Succession of States in respect of State Property, Archives and Debts* consist of two volumes.

Volume I contains the summary records of the plenary meetings and of the meetings of the Committee of the Whole. Volume II contains the documents, which include the Final Act, the resolutions adopted by the Conference and the Convention itself; it also contains a complete index of the documents relevant to the proceedings of the Conference.

* * *

The summary records of the plenary meetings and of the meetings of the Committee of the Whole contained in volume I were originally circulated in mimeographed form, as documents A/CONF.117/SR.1 to SR.10 and A/CONF.117/C.1/SR.1 to SR.44 respectively. They include the corrections to the provisional summary records that were requested by delegations and such drafting and editorial changes as were considered necessary.

* * *

The symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

* * *

The word "*Yearbook*" followed by suspension points and the year (e.g., *Yearbook . . . 1970*) indicates a reference to the *Yearbook of the International Law Commission*.

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RESOLUTIONS OF THE GENERAL ASSEMBLY CONCERNING THE CONFERENCE

36/113. United Nations Conference on Succession of States in respect of State Property, Archives and Debts

The General Assembly,

Having considered chapter II of the report of the International Law Commission on the work of its thirty-third session[1] which contains final draft articles and commentaries on succession of States in respect of State property, archives and debts,

Noting that the International Law Commission at its first session in 1949 listed succession of States and Governments among the topics of international law selected for codification, that at its fourteenth session in 1962, pursuant to General Assembly resolution 1686 (XVI) of 18 December 1961, it included the topic on its priority list and that at its fifteenth session in 1963 the Commission endorsed the objective of preparing draft articles on the topic,

Recalling that in its resolutions 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965, 2167 (XXI) of 5 December 1966, 2272 (XXII) of 1 December 1967, 2400 (XXIII) of 11 December 1968 and 2501 (XXIV) of 12 November 1969, the General Assembly recommended that the International Law Commission should continue the work of codification and progressive development of succession of States and Governments, taking into account the views expressed in the General Assembly and the comments submitted by Governments with appropriate reference to the views of States which have achieved independence since the Second World War,

Recalling further that, by its resolution 3496 (XXX) of 15 December 1975, the General Assembly decided to convene a conference of plenipotentiaries to consider the International Law Commission's draft articles on succession of States in respect of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate,

Noting also that the Vienna Convention on Succession of States in respect of Treaties[2] was adopted on 23 August 1978,

Noting further that, subsequent to the adoption of General Assembly resolution 2634 (XXV) of 12 November 1970, 2780 (XXVI) of 3 December 1971, 2926 (XXVII) of 28 November 1972, 3071 (XXVIII) of 30 November 1973, 3315 (XXIX) of 14 December 1974, 3495 (XXX) of 15 December 1975, 31/97 of 15 December 1976 and 32/151 of 19 December 1977, the International Law Commission, pursuant to General Assembly resolutions 33/139 of 19 December 1978, 34/141 of 17 December 1979 and 35/163 of 15 December 1980, completed at its thirty-third session its draft articles on succession of States in respect of State property, archives and debts,[3]

Recalling that, as stated in paragraph 86 of the report of the International Law Commission on the work of its thirty-third session, the Commission decided to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on succession of States in respect of State property, archives and debts and to conclude a convention on the subject,

Mindful of Article 13, paragraph 1 *a*, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Believing that the successful codification and progressive development of the rules of international law governing succession of States in respect of State property, archives and debts would contribute to the development of friendly relations and co-operation among States, irrespective of their differing constitutional and social systems, and would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter,

1. *Expresses its appreciation* to the International Law Commission for its valuable work on the question of succession of States in respect of State property, archives and debts, and to the Special Rapporteur on the topic for his contribution to this work;

2. *Decides* that an international conference of plenipotentiaries shall be convened to consider the draft articles on succession of States in respect of State property, archives and debts, and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

3. *Requests* the Secretary-General to convene the United Nations Conference on Succession of States in respect of State Property, Archives and Debts early in 1983 at a place to be determined by the General Assembly at its thirty-seventh session;

4. *Invites* Member States to submit, not later than 1 July 1982, their written comments and observations on the final draft articles on succession of States in respect of State property, archives and debts, prepared by the International Law Commission;

5. *Requests* the Secretary-General to circulate such comments so as to facilitate the discussion on the

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[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10* (A/36/10 and Corr.1).

[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III, *Documents of the Conference* (United Nations publication, Sales No. E.79.V.10), p. 185.

[3] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10* (A/36/10 and Corr.1), chap. II, sect. D.

subject at the thirty-seventh session of the General Assembly;

6. *Decides* to include in the provisional agenda of its thirty-seventh session an item entitled "United Nations Conference on Succession of States in respect of State Property, Archives and Debts".

92nd plenary meeting
10 December 1981

37/11. United Nations Conference on Succession of States in respect of State Property, Archives and Debts

The General Assembly,

Recalling that, by its resolution 36/113 of 10 December 1981, it decided to convene a conference of plenipotentiaries in 1983 to consider the draft articles on succession of States in respect of State property, archives and debts, adopted by the International Law Commission at its thirty-third session,[e] and to embody the results of its work in an international convention and such other instruments as it might deem appropriate,

Recalling further that, in paragraph 1 of the same resolution, it expressed its appreciation to the International Law Commission for its valuable work on the question of succession of States in respect of State property, archives and debts, and to the Special Rapporteur on the topic for his contribution to that work,

Believing that the draft articles adopted by the International Law Commission at its thirty-third session represent a good basis for the elaboration of an international convention and such other instruments as may be appropriate on the question of succession of States in respect of State property, archives and debts,

Taking note of the report of the Secretary-General,[f] which contains the comments and observations submitted by a number of Member States in accordance with General Assembly resolution 36/113,

Mindful of Article 13, paragraph 1 *a*, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Believing that the successful codification and progressive development of the rules of international law governing succession of States in respect of State property, archives and debts would contribute to the development of friendly relations and co-operation among States, irrespective of their constitutional and social systems, and would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter,

Noting with appreciation that an invitation has been extended by the Government of Austria to hold the United Nations Conference on Succession of States in respect of State Property, Archives and Debts at Vienna,

1. *Decides* that the United Nations Conference on Succession of States in respect of State Property, Archives and Debts, referred to in General Assembly resolution 36/113, shall be held from 1 March to 8 April 1983 at Vienna;

2. *Requests* the Secretary-General to invite:

(*a*) All States to participate in the Conference;

(*b*) Namibia, represented by the United Nations Council for Namibia, to participate in the Conference, in accordance with paragraph 1 of General Assembly resolution 36/121 D of 10 December 1981;

(*c*) Representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices in the capacity of observer to participate in the Conference in that capacity, in accordance with Assembly resolutions 3237 (XXIX) of 22 November 1974 and 31/152 of 20 December 1976;

(*d*) Representatives of the national liberation movements recognized in its region by the Organization of African Unity to participate as observers, in accordance with General Assembly resolution 3280 (XXIX) of 10 December 1974;

(*e*) The specialized agencies and the International Atomic Energy Agency as well as interested organs of the United Nations and interested intergovernmental organizations to be represented by observers at the Conference;

3. *Refers* to the Conference, as the basic proposal for its consideration, the draft articles on succession of States in respect of State property, archives and debts adopted by the International Law Commission at its thirty-third session;

4. *Decides* that the languages of the Conference shall be the official and working languages of the General Assembly, its committees and its sub-committees;

5. *Requests* the Secretary-General to submit to the Conference all relevant documentation and recommendations relating to its methods of work and procedures and to arrange for the necessary staff, facilities and services which it will require, including the provision of summary records;

6. *Requests* the Secretary-General to arrange for the participation at the Conference, as an expert, of the former Special Rapporteur of the International Law Commission on the topic of succession of States in respect of matters other than treaties, if he is available.

68th plenary meeting
15 November 1982

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[e] *Ibid.*

[f] A/37/454 and Corr.1 and Add.1.

OFFICERS OF THE CONFERENCE AND ITS COMMITTEES

President of the Conference

Mr. Ignaz Seidl-Hohenveldern (Austria).

Vice-Presidents of the Conference

The representatives of the following States: Algeria, Bulgaria, Chile, Ecuador, Egypt, France, German Democratic Republic, India, Indonesia, Italy, Morocco, Nigeria, Norway, Pakistan, Suriname, Switzerland, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Zaire.

Committee of the Whole

Chairman: Mr. Milan Šahović (Yugoslavia).

Vice-Chairman: Mr. Moncef Benouniche (Algeria).

Rapporteur: Mrs. Kuljit Thakore (India).

Credentials Committee

Chairman: Mr. Geraldo Eulalio do Nascimento e Silva (Brazil).

Members: Belgium, Brazil, Japan, Kenya, Kuwait, Nicaragua, Senegal, United States of America and Union of Soviet Socialist Republics.

Drafting Committee

Chairman: Mr. Sompong Sucharitkul (Thailand).

Members: Algeria, Argentina, France, Greece, Japan, Kenya, Nigeria, Poland, Qatar (to be replaced by Iraq for the last three weeks of the Conference), Spain, Thailand, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (replaced by Cuba on 28 March 1983).

Expert Consultant

Judge Mohammed Bedjaoui, Special Rapporteur on succession of States in respect of State property, archives and debts, International Law Commission.

Secretariat of the Conference

Mr. Carl-August Fleischhauer, Under-Secretary-General, Legal Counsel of the United Nations *(Representative of the Secretary-General of the United Nations).*

Mr. Valentin A. Romanov, Director, Codification Division, Office of Legal Affairs *(Executive Secretary of the Conference).*

Miss Jacqueline Dauchy, Office of Legal Affairs *(Secretary of the Committee of the Whole).*

Mr. Eduardo Valencia-Ospina, Office of Legal Affairs *(Secretary of the Committee of the Whole, Secretary of the Drafting Committee).*

Mr. Andronico O. Adede, Office of Legal Affairs *(Assistant Secretary of the Committee of the Whole).*

Mr. Larry D. Johnson, Office of Legal Affairs *(Assistant Secretary of the Committee of the Whole, Assistant Secretary of the Drafting Committee).*

Mr. Peter Neumann, Office of Legal Affairs *(Secretary of the Credentials Committee).*

Mr. Sergei Shestakov, Office of Legal Affairs *(Assistant Secretary of the Committee of the Whole).*

AGENDA*

Document A/CONF.117/7

1. Opening of the Conference by the representative of the Secretary-General
2. Election of the President
3. Adoption of the agenda
4. Adoption of the rules of procedure
5. Election of Vice-Presidents
6. Election of the Chairman of the Committee of the Whole
7. Election of the Chairman of the Drafting Committee
8. Appointment of the Credentials Committee
9. Appointment of other members of the Drafting Committee
10. Organization of work
11. Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982
12. Adoption of a convention and other instruments deemed appropriate and of the final act of the Conference
13. Signature of the Final Act and of the Convention and other instruments.

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* Adopted by the Conference at its 1st plenary meeting.

RULES OF PROCEDURE*

Document A/CONF.117/8

CHAPTER I

Representation and credentials

Rule 1. Composition of delegations

The delegation of each State participating in the Conference shall consist of a head of delegation and such other accredited representatives, alternate representatives and advisers as may be required.

Rule 2. Alternates and advisers

An alternate representative or an adviser may act as a representative upon designation by the head of delegation.

Rule 3. Submission of credentials

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Executive Secretary if possible not later than 24 hours after the opening of the Conference. Any later change in the composition of delegations shall also be submitted to the Executive Secretary. The credentials shall be issued either by the Head of State or Government, or by the Minister for Foreign Affairs.

Rule 4. Credentials Committee

A Credentials Committee shall be appointed at the beginning of the Conference. It shall consist of nine members, who shall be appointed by the Conference on the proposal of the President. It shall examine the credentials of representatives and report to the Conference without delay.

Rule 5. Provisional participation in the Conference

Pending a decision of the Conference upon their credentials, representatives shall be entitled to participate provisionally in the Conference.

CHAPTER II

Officers

Rule 6. Elections

The Conference shall elect a President and 22 Vice-Presidents, as well as the Chairman of the Committee of the Whole provided for in rule 46 and the Chairman of the Drafting Committee provided for in rule 47. These officers shall be elected on the basis of ensuring the representative character of the General Committee. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

Rule 7. General powers of the President

1. In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall preside at the plenary meetings of the Conference, declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The President shall rule on points of order and, subject to these rules, shall have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times each representative may speak on a question, the adjournment or the closure of the debate and the suspension or the adjournment of a meeting.

2. The President, in the exercise of his functions, remains under the authority of the Conference.

Rule 8. Acting President

1. If the President finds it necessary to be absent from a meeting or any part thereof, he shall designate a Vice-President to take his place.

2. A Vice-President acting as President shall have the powers and duties of the President.

Rule 9. Replacement of the President

If the President is unable to perform his functions, a new President shall be elected.

Rule 10. The President shall not vote

The President, or a Vice-President acting as President, shall not vote in the Conference, but shall designate another member of his delegation to vote in his place.

CHAPTER III

General Committee

Rule 11. Composition

There shall be a General Committee consisting of 25 members, which shall comprise the President and Vice-Presidents of the Conference, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee. The President of the Conference, or in his absence, one of the Vice-Presidents designated by him, shall serve as Chairman of the General Committee.

Rule 12. Substitute members

If the President or a Vice-President of the Conference finds it necessary to be absent during a meeting of the General Committee, he may designate a member of his delegation to sit and vote in the Committee. In case of absence, the Chairman of the Committee of the Whole shall designate the Vice-Chairman of that Committee as his substitute, and the Chairman of the Drafting Committee shall designate a member of the Drafting Committee. When serving on the General Committee, the Vice-Chairman of the Committee of the Whole or member of the Drafting Committee shall not have the right to vote if he is of the same delegation as another member of the General Committee.

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* Adopted by the Conference at its 1st plenary meeting.

Rule 13. Functions

The General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the co-ordination of its work.

CHAPTER IV

Secretariat

Duties of the Secretary-General and the secretariat

Rule 14. Duties of the Secretary-General

1. The Secretary-General of the United Nations shall be the Secretary-General of the Conference. He, or his representative, shall act in that capacity in all meetings of the Conference and its committees.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference and its committees.

Rule 15. Duties of the secretariat

The secretariat of the Conference shall, in accordance with these rules:

(*a*) Interpret speeches made at meetings;

(*b*) Receive, translate, reproduce and distribute the documents of the Conference;

(*c*) Publish and circulate the official documents of the Conference;

(*d*) Prepare and circulate records of public meetings;

(*e*) Make and arrange for the keeping of sound recordings of meetings;

(*f*) Arrange for the custody and preservation of the documents of the Conference in the archives of the United Nations; and

(*g*) Generally perform all other work that the Conference may require.

Rule 16. Statements by the secretariat

The Secretary-General or any other member of the staff designated for that purpose may at any time make either oral or written statements concerning any question under consideration.

CHAPTER V

Conduct of business

Rule 17. Quorum

The President may declare a meeting open and permit the debate to proceed when representatives of at least one third of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

Rule 18. Speeches

1. No one may address the Conference without having previously obtained the permission of the President. Subject to rules 19, 20 and 23 to 25, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

2. The Conference may limit the time allowed to each speaker and the number of times each representative may speak on a question. Before a decision is taken, two representatives may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a speaker exceeds the allotted time, the President shall call him to order without delay.

Rule 19. Precedence

The chairman or rapporteur of a committee, or the representative of a sub-committee or working group, may be accorded precedence for the purpose of explaining the conclusions arrived at by his committee, sub-committee or working group.

Rule 20. Points of order

During the discussion of any matter, a representative may at any time raise a point of order, which shall be decided immediately by the President in accordance with these rules. A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately, and the President's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

Rule 21. Closing of list of speakers

During the course of a debate the President may announce the list of speakers and, with the consent of the Conference, declare the list closed.

Rule 22. Right of reply

The right of reply shall be accorded by the President to a representative of a State participating in the Conference who requests it. Any other representative may be granted the opportunity to make a reply. Representatives should attempt, in exercising this right, to be as brief as possible.

Rule 23. Adjournment of debate

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be put to the vote immediately.

Rule 24. Closure of debate

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be put immediately to the vote.

Rule 25. Suspension or adjournment of the meeting

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be put immediately to the vote.

Rule 26. Order of motions

Subject to rule 20, the motions indicated below shall have precedence in the following order over all proposals or other motions before the meeting:

(*a*) To suspend the meeting;

(*b*) To adjourn the meeting;

(*c*) To adjourn the debate on the question under discussion;

(*d*) To close the debate on the question under discussion.

Rule 27. Basic proposal

The draft articles on succession of States in respect of State property, archives and debts, adopted by the International Law Commission shall constitute the basic proposal for discussion by the Conference.

Rule 28. Other proposals and amendments

Other proposals and amendments thereto shall normally be submitted in writing to the Executive Secretary of the Conference, who shall circulate copies to all delegations. As a general rule no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or motions as to procedure, even though these amendments and motions have not been circulated or have only been circulated the same day.

Rule 29. Decisions on competence

Subject to rule 20, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

Rule 30. Withdrawal of proposals, amendments and motions

A proposal, an amendment or a motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that it has not been amended. A proposal, an amendment or a motion which has thus been withdrawn may be reintroduced by any representative.

Rule 31. Reconsideration of proposals

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

Rule 32. Invitations to technical advisers

The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

CHAPTER VI

Voting

Rule 33. Voting rights

Each State represented at the Conference shall have one vote.

Rule 34. Majority required

1. Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question. An appeal against this ruling shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the representatives present and voting.

Rule 35. Meaning of the expression "representatives present and voting"

For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

Rule 36. Method of voting

The Conference shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President.

Rule 37. Conduct during voting

The President shall announce the commencement of voting, after which no representative shall be permitted to intervene until the result of the vote has been announced, except on a point of order in connection with the process of voting.

Rule 38. Explanation of vote

Representatives may make brief statements consisting solely of explanation of their votes, before the voting has commenced or after the voting has been completed. The representative of a State sponsoring a proposal, amendment or motion shall not speak in explanation of vote thereon except if it has been amended.

Rule 39. Division of proposals and amendments

A representative may move that parts of a proposal or an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

Rule 40. Voting on amendments

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Rule 41. Voting on proposals

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The Conference may, after each vote on a proposal, decide whether to vote on the next proposal.

Rule 42. Elections

All elections shall be held by secret ballot unless otherwise decided by the Conference.

Rule 43

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the representatives present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the preceding paragraph.

Rule 44

When two or more elective places are to be filled at one time under the same conditions, those candidates, not exceeding the number of such places, obtaining in the first ballot a majority of the representatives present and voting shall be elected. If the number of candidates obtaining such majority is less than the number of persons or delegations to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter, shall be unrestricted, and so on until all the places have been filled.

Rule 45. Equally divided votes

If a vote is equally divided on matters other than elections, the proposal, amendment or motion shall be regarded as rejected.

CHAPTER VII

Committees

Rule 46. Committee of the Whole

The Conference shall establish a single Committee of the Whole, which may set up sub-committees or working groups. The Committee of the Whole shall have as its officers a Chairman, a Vice-Chairman and a Rapporteur.

Rule 47. Drafting Committee

1. The Conference shall establish a Drafting Committee consisting of 15 members, including its Chairman who shall be elected by the Conference in accordance with rule 6. The other 14 members of the Committee shall be appointed by the Conference on the proposal of the General Committee. The Rapporteur of the Committee of the Whole participates *ex officio*, without a vote, in the work of the Drafting Committee.

2. The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Conference or by the Committee of the Whole. It shall co-ordinate and review the drafting of all texts adopted, and shall report as appropriate either to the Conference or to the Committee of the Whole.

Rule 48. Officers

Except as otherwise provided in rule 6, each committee, sub-committee and working group shall elect its own officers.

Rule 49. Quorum

1. The Chairman of the Committee of the Whole may declare a meeting open and permit the debate to proceed when representatives of at least one quarter of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

2. A majority of the representatives on the General, Drafting or Credentials Committee or on any sub-committee or working group shall constitute a quorum.

Rule 50. Officers, conduct of business and voting

The rules contained in chapters II, V and VI above shall be applicable, *mutatis mutandis*, to the proceedings of committees, sub-committees and working groups, except that:

(*a*) The Chairmen of the General, Drafting and Credentials Committee and the chairmen of sub-committees and working groups may exercise the right to vote, and

(*b*) Decisions of committees, sub-committees and working groups shall be taken by a majority of the representatives present and voting, except that the reconsideration of a proposal or an amendment shall require the majority established by rule 31.

CHAPTER VIII

Languages and records

Rule 51. Languages of the Conference

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the Conference.

Rule 52. Interpretation

1. Speeches made in a language of the Conference shall be interpreted into the other such languages.

2. A representative may speak in a language other than a language of the Conference. In this case he shall himself provide for interpretation into one of the languages of the Conference and interpretation into the other languages by the interpreters of the Secretariat may be based on the interpretation given in the first such language.

Rule 53. Records and sound recordings of meetings

1. Summary records of the plenary meetings of the Conference and of the meetings of the Committee of the Whole shall be kept in the languages of the Conference. As a general rule, they shall be circulated as soon as possible, simultaneously in all the languages of the Conference, to all representatives, who shall inform the Secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

2. The Secretariat shall make sound recordings of meetings of the Conference and the Committee of the Whole. Such recordings shall be made of meetings of other committees, sub-committees or working groups when the body concerned so decides.

Rule 54. Languages of official documents

Official documents shall be made available in the languages of the Conference.

CHAPTER IX

Public and private meetings

Rule 55. Plenary meetings and meetings of committees

The plenary meetings of the Conference and the meetings of committees shall be held in public unless the body concerned decides otherwise.

Rule 56. Meetings of sub-committees or working groups

As a general rule meetings of a sub-committee or working group shall be held in private.

Rule 57. Communiqués to the press

At the close of any private meeting a communiqué may be issued to the press through the Executive Secretary.

CHAPTER X

Other participants and observers

Rule 58. Representatives of the United Nations Council for Namibia

Representatives designated by the United Nations Council for Namibia may participate in the deliberations of the Conference, the Committee of the Whole, and other committees, sub-committees or working groups, in accordance with the relevant resolutions and decisions of the General Assembly.

Rule 59. Representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the General Assembly in the capacity of observer

Representatives designated by organizations that have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the General Assembly have the right to participate as observers, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and, as appropriate, other committees, sub-committees or working groups.

Rule 60. Representatives of national liberation movements

Representatives designated by national liberation movements invited to the Conference may participate as observers, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and, as appropriate, other committees, sub-committees or working groups.

Rule 61. Representatives of United Nations organs and agencies

Representatives designated by organs of the United Nations, the specialized agencies and the International Atomic Energy Agency may participate as observers, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and, as appropriate, other committees, sub-committees or working groups.

Rule 62. Observers for other intergovernmental organizations

Observers designated by other intergovernmental organizations invited to the Conference may participate, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and, as appropriate, other committees, sub-committees or working groups.

CHAPTER XI

Amendments to the Rules of Procedure

Rule 63. Method of amendment

These rules of procedure may be amended by a decision of the Conference taken by a two-thirds majority of the representatives present and voting.

SUMMARY RECORDS OF THE PLENARY MEETINGS

1st TO 10th MEETINGS

SUMMARY RECORDS OF THE PLENARY MEETINGS

1st plenary meeting

Tuesday, 1 March 1983, at 10.20 a.m.

Acting President: Mr. FLEISCHHAUER
(Legal Counsel of the United Nations,
representing the Secretary-General)

President: Mr. SEIDL-HOHENFELDERN (Austria)

Opening of the Conference by the representative of the Secretary-General

[Item 1 of the provisional agenda]

1. The ACTING PRESIDENT, speaking as the representative of the Secretary-General, extended a warm welcome to the Federal President of the Republic of Austria. The Federal Government of Austria, in keeping with its long tradition, had once again offered to host the latest in a series of legal codification conferences convened under the auspices of the United Nations. The Organization greatly appreciated that invitation, as had been expressly recognized by the General Assembly in its resolution 37/11 of 15 November 1982, and it was grateful for all the facilities and assistance provided again by the host Government in Vienna, a city which had already lent its name to five codification conventions in the field of public international law. The presence at the Conference of the Federal President of Austria, who had long been actively involved in the process of codification of international law, was itself proof of Austria's attachment to the cause of the United Nations and the promotion of international law.

2. He also welcomed the other distinguished officials and special guests who were present and wished the participants in the Conference success in the important and delicate task ahead of them.

3. On behalf of the Secretary-General, he declared open the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts and invited the Conference to observe a minute of silence for prayer or meditation.

The Conference observed a minute of silence.

4. The ACTING PRESIDENT, speaking as the representative of the Secretary-General, observed that the Conference was in a sense a sister conference to the United Nations Conference on Succession of States in Respect of Treaties, which had been held in Vienna in 1977 and 1978. The present Conference had been convened by the General Assembly for the purpose of concluding, on the basis of a draft prepared by the International Law Commission,[1] a convention again reflecting the progressive development and codification in the field of State succession, but on the present occasion in respect of property, archives and debts. That future convention would be part of the *corpus juris gentium* in written form which the United Nations had produced over the years. The existence of such a *corpus* bore witness to the foresight of those who had devised the flexible mechanism, with the International Law Commission in the pivotal role that had facilitated the effective fulfilment by the General Assembly of the obligation laid down in Article 13, paragraph 1(*a*) of the Charter, to encourage the progressive development of international law and its codification.

5. Codification and progressive development were two inseparable and indispensable components in the process undertaken in furtherance of that provision of the Charter, and the element linking both components in the kind of conventional codification undertaken under the auspices of the United Nations was the democratic necessity of consent. Conventional codification answered a need of the rapidly growing international community, but consent to conventional codification could not be achieved without a sometimes considerable amount of progressive development.

6. The necessity of consent among sovereign States afforded a guarantee that the rules adopted in the process of conventional codification as undertaken under the auspices of the United Nations would be attuned to the realities of today's international community, realities marked not only by the expanding membership of that community, but also by the increase in the variety of cultural and legal traditions and backgrounds represented in it. The set of codification conventions already adopted under the auspices of the United Nations proved that the Organization had achieved tangible and far-reaching results in the task entrusted to it by Article 13 of the Charter.

7. The draft submitted for consideration by the Conference was again the result of long and careful study by the International Law Commission, extending over a decade. The learned guidance and determined efforts of the Commission's Special Rapporteur on the topic, Judge Mohamed Bedjaoui, who would be participating in the Conference in the capacity of expert consultant, had greatly contributed to the excellence of that draft.

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[1] See sect. B of vol. II.

8. He invited the Federal President of the Republic of Austria to address the Conference.

Address by the Federal President of the Republic of Austria

9. H.E. Dr. Rudolf KIRCHSCHLAEGER (Federal President of the Republic of Austria) said that the holding of the Conference in the capital of Austria continued a long-standing tradition of United Nations conferences devoted to the codification of international law. He warmly welcomed all the participants and expressed the hope that the working conditions and conference environment in Vienna would contribute to a successful outcome of their work. He also hoped that the reputation of Austria as an international meeting place, based not only on its permanent neutrality but also on its history and geographical situation, would be maintained.

10. He recalled that 22 years previously, in his capacity as Legal Adviser to the Austrian Foreign Ministry, he had been responsible for organizing, and had served as acting Head of the Austrian delegation at the United Nations Conference on Diplomatic Intercourse and Immunities, the so-called Second Congress of Vienna. Again in 1963 he had served in the same capacity at the Vienna Conference on Consular Relations. Conferences on the codification of international law had therefore come to have a special value in his thoughts and political considerations. He was convinced that the initiation of studies and the adoption of recommendations aimed at encouraging the progressive development of international law and its codification was not only one of the main functions of the General Assembly of the United Nations but was also one of the means of making the world more peaceful. The endeavours of the Conference in the coming weeks to codify a further important segment of international relations fell into that domain and would contribute effectively to the maintenance and strengthening of international peace and security.

11. Since 1961, large and important sectors of international law had undergone the process of codification and had thereby become cornerstones for the bilateral and multilateral conduct of international affairs.

12. As Head of State of the host country he believed he should abstain from commenting on the draft articles before the Conference. He was confident, however, that the valuable experience and outstanding knowledge of all those present would ensure success in the elaboration of an international convention and such other instruments as might be necessary. As in all other international conferences, mutual understanding and readiness to make fair compromises where necessary would be required in the coming weeks if the work undertaken was to reach the successful conclusion he wished for all concerned.

Election of the President

[Item 2 of the provisional agenda]

13. The ACTING PRESIDENT said that there had been a large number of requests from many quarters for the nomination of Mr. Ignaz Seidl-Hohenveldern, Conference. He noted the absence of any other nominations.

Mr. Seidl-Hohenveldern (Austria) was elected President by acclamation and took the chair.

14. The PRESIDENT said that he was most grateful for the signal honour the Conference had done him in electing him President. He took the election as a tribute to Vienna, the third conference centre of the United Nations, and to his eminent Austrian predecessors whom he would endeavour to emulate on the present occasion.

15. He believed he could refer to his fellow participants in the Conference as "colleagues" and "friends". He addressed them as "colleagues" because, having spent many years in the Austrian diplomatic service and as a teacher of law, he had always appreciated the great value of the work being done by the United Nations in the area of codification. Irrespective of whether the rules codified would become part of customary law, the mere fact that certain rules of international law were codified facilitated the work of both diplomats and teachers. The draft articles submitted, which were the result of lengthy deliberations in the International Law Commission and were accompanied by detailed commentaries by Judge Bedjaoui, formed an invaluable basis for the work of the Conference. If that work culminated in the adoption of a convention, the Conference would indeed have performed a most useful task.

16. In referring to the participants in the Conference as "dear friends", he had in mind not merely friends in the sense of colleagues appointed by their respective administrations, but rather friends in a higher and less automatic sense. The number of specialists in public international law in national administrations was quite small. During discussions, those experts sometimes found that their counterparts from other countries were more attuned to their concerns than were the various other branches of their own administrations. While he certainly did not intend to conjure up visions of an unholy alliance among the jurists of the world, it was a fact that like understood like. A jurist should always be able to follow the reasoning of another jurist intellectually, even when he might not be in agreement with him. This spirit of understanding could and should lead to mutual respect. During his long career, he had experienced such respect and had subsequently established ties of friendship which transcended ideological and ethnic differences. He was thus pleased and proud to be able to greet friends among the participants in the present Conference. He trusted that a spirit of mutual understanding would prevail, even during the discussion of controversial matters, and that the joint efforts made would result in the establishment of closer relations, not only among the representatives present, but also among the States they represented. Should that be achieved, he was confident that the Conference would be a success.

Adoption of the agenda

[Item 3 of the provisional agenda]

17. The PRESIDENT invited the Conference to

ment A/CONF.117/1, in two stages: first, items 1 to 5 and 7 to 13, and then item 6.

Items 1 to 5 and 7 to 13 of the provisional agenda were approved.

18. The PRESIDENT invited the Conference to decide, with reference to item 6 of the provisional agenda, whether one or two committees of the whole should be established, taking into account the views expressed on that subject by the sponsors of General Assembly resolution 37/11, as reflected in the memorandum by the Secretary-General on the methods of work and procedures of the Conference (A/CONF.117/3).

19. Msgr. PERESSIN (Holy See) said that it would be preferable to have only one committee of the whole, since the duration of the Conference was sufficient to permit full discussion of all matters and the number of participants did not justify the establishment of two committees.

20. Mr. BINTOU (Zaire) considered that the establishment of two committees would unduly complicate the work of the Conference.

21. Mr. GUILLAUME (France) said that one committee of the whole would be more effective.

22. Mr. CALISTO (Ecuador) supported the views of the previous speakers.

23. The PRESIDENT said that, since all those who had spoken appeared to favour the establishment of only one committee of the whole, he took it that item 6 of the provisional agenda should remain unchanged.

Item 6 of the provisional agenda was approved.

The provisional agenda (A/CONF.117/1[2]*) was adopted.*

Adoption of the rules of procedure

[Agenda item 4]

The provisional rules of procedure (A/CONF.117/2[3]*) were adopted.*

24. Mr. SULLIVAN (Canada), speaking on behalf of the Governments of Canada, France, the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland and the United States of America, said that, since 1977, those Governments, as members of the Contact Group concerned with the question of Namibia, had endeavoured to promote through negotiations an internationally acceptable settlement of the continuing conflict over that territory.

25. Rule 58 of the rules of procedure reflected the clear distinction made in operative paragraph 2 of General Assembly resolution 37/11 between on the one hand States, and on the other Namibia, represented by the United Nations Council for Namibia. While they had voted in favour of adoption of the rules of procedure, the Governments for which he spoke wished to reserve their position as to the seating of delegations in the conference hall, which did not reflect the distinction made in the rules of procedure and in resolution 37/11. Their acceptance of those arrangements could not therefore be construed as a change in their position concerning the legal nature of the participation of Namibia, represented by the United Nations Council for Namibia.

The meeting rose at 11.30 a.m.

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[2] The agenda as adopted by the Conference was circulated as document A/CONF.117/7.

[3] The rules of procedure as adopted by the Conference were circulated as document A/CONF.117/8.

2nd plenary meeting

Tuesday, 1 March 1983, at 3 p.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Election of Vice-Presidents

[Agenda item 5]

1. The PRESIDENT said that he proposed to suspend the meeting in order to give the regional groups time to complete their consultations.

The meeting was suspended at 3.05 p.m. and resumed at 3.35 p.m.

2. The PRESIDENT said that, taking into account the provisions of rule 6 of the rules of procedure, the regional groups had nominated the following States as Vice-Presidents of the Conference: Algeria, Bulgaria, Chile, Ecuador, Egypt, France, German Democratic Republic, India, Indonesia, Italy, Morocco, Nigeria, Norway, Pakistan, Suriname, Switzerland, Union of United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Zaire.

Those States were elected Vice-Presidents of the Conference by acclamation.

Election of the Chairman of the Committee of the Whole

[Agenda item 6]

3. Mrs. BOKOR-SZEGŐ (Hungary), speaking on behalf of the Group of Eastern European States, nominated Mr. Milan Šahović (Yugoslavia) for the office of Chairman of the Committee of the Whole.

4. Mr. do NASCIMENTO e SILVA (Brazil) and Mr. SHASH (Egypt) seconded the nomination.

Mr. Šahović was elected Chairman of the Commit-

Election of the Chairman of the Drafting Committee

[Agenda item 7]

5. Mr. MURAKAMI (Japan), speaking of behalf of the Group of Asian States, nominated Mr. Sompong Sucharitkul (Thailand) for the office of Chairman of the Drafting Committee.

Mr. Sucharitkul (Thailand) was elected Chairman of the Drafting Committee by acclamation.

Appointment of the Credentials Committee

[Agenda item 8]

6. The PRESIDENT said that, owing to the late arrival of some delegations, not all the regional groups had yet submitted their nominations of members of the Credentials Committee.

7. Mr. ROSENSTOCK (United States of America) drew attention to the long-established practice whereby the membership of a Credentials Committee followed the pattern of that of the Credentials Committee of the General Assembly of the United Nations directly preceding the conference in question.

8. The PRESIDENT suggested that consideration of the item should be deferred till a later date.

It was so decided.

Appointment of other members of the Drafting Committee

[Agenda item 9]

9. The PRESIDENT said that he proposed to suspend the meeting in order to convene a meeting of the General Committee.

The meeting was suspended at 3.55 p.m. and resumed at 5.15 p.m.

10. The PRESIDENT, referring to rule 47 of the rules of procedure, said that the Group of African States had not yet completed its consultations owing to the late arrival of some members. The final decision on the composition of the Drafting Committee would therefore have to be deferred. Pending the nominations of the Group of African States to three seats remaining to be filled, the General Committee recommended that the following States should be appointed members of the Drafting Committee: Argentina, France, Greece, Japan, Poland, Qatar (to be replaced by Iraq for the last three weeks of the Conference), Spain, Thailand, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

Those States were appointed members of the Drafting Committee.

Organization of work

[Agenda item 10]

11. The PRESIDENT said that the General Committee recommended that the Conference should endorse the suggestions contained in the memorandum by the Secretary-General (A/CONF.117/3), which were based on the experience of previous codification conferences, on the understanding that the Conference and its organs would have the necessary flexibility to adapt the recommended procedures to their needs.

It was so decided.

The meeting rose at 5.20 p.m.

3rd plenary meeting

Friday, 4 March 1983, at 10.10 a.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Appointment of other members of the Drafting Committee (*concluded*)

[Agenda item 9]

1. The PRESIDENT announced that consultations in respect of the remaining members of the Drafting Committee had been completed and that the Group of African States had decided to nominate Algeria, Kenya and Nigeria to the three remaining seats on that Committee. The recommendation of the General Committee therefore was that the Drafting Committee should be composed of the following States: Algeria, Argentina, France, Greece, Japan, Kenya, Nigeria, Poland, Qatar (to be replaced by Iraq for the last three weeks of the Conference), Spain, Thailand (Chairman), Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela. In the absence of objection he would take it that the Conference appointed the representatives of the States he had mentioned as members of the Drafting Committee.

It was so decided.

Appointment of the Credentials Committee (*concluded*)

[Agenda item 8]

2. The PRESIDENT said that after long negotiations an agreement had been reached in respect of the membership of the Credentials Committee. He now proposed that that Committee should be composed of the following States: Belgium, Brazil, Japan, Kenya, Kuwait, Nicaragua, Senegal, Union of Soviet Socialist Republics and United States of America.

It was so decided.

The meeting rose at 10.15 a.m.

4th plenary meeting

Thursday, 17 March 1983, at 12.25 p.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Organization of work

[Agenda item 10]

1. The PRESIDENT said that, at its meeting earlier that day, the General Committee had considered the progress made in the work of the Conference and ways and means of ensuring that the Conference would successfully complete its work on time. In the light of the General Committee's deliberations and in order that the work of the Conference might be expedited, he suggested that: (*a*) informal consultations should be encouraged between regional and other groups before major issues were considered by the Committee of the Whole and after decisions had been taken indicating that major differences remained on those major issues, so as to enhance the possibility of a generally agreed text being adopted in the final stages of the Conference; (*b*) the Secretariat should be requested to enquire about the possibility of scheduling meetings on Easter Monday, 4 April 1983, should the Conference decide that it would be necessary to meet on that day; (*c*) all delegations should be requested to exercise self-restraint in the length of their statements; (*d*) the Committee of the Whole should exercise discretion in suspending its meetings for short coffee breaks, so that such breaks would be utilized only for purposes of negotiation and reaching an agreement on contentious points; (*e*) evening meetings should be envisaged, particularly for the Drafting Committee; and (*f*) the possibilities provided by the rules of procedure to shorten lengthy and repetitious debates should be fully utilized.

2. In the absence of any comment, he would take it that the Conference agreed with those suggestions.

It was so decided.

The meeting rose at 12.30 p.m.

5th plenary meeting

Monday, 28 March 1983, at 10.10 a.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Organization of work

[Agenda item 10]

1. The PRESIDENT said that, in accordance with rule 47, paragraph 1 of the rules of procedure, the General Committee had decided to recommend that Cuba should be appointed to the Drafting Committee to replace Venezuela which had announced its desire to withdraw.

2. If there was no objection, he would take it that the Conference approved the General Committee's recommendation.

It was so decided.

The meeting rose at 10.15 a.m.

6th plenary meeting

Tuesday, 5 April 1983, at 3.15 p.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982

[Agenda item 11]

REPORTS OF THE DRAFTING COMMITTEE (A/CONF.117/10 and Add.1-3)

REPORT OF THE COMMITTEE OF THE WHOLE (A/CONF.117/11 and Add.1-12)

1. The PRESIDENT drew attention to the strict timetable which the Conference would have to follow if it was to conclude its work successfully on time. Accordingly he urged delegations to exercise self-restraint as regards the length and number of their statements.

2. He recalled that the Committee of the Whole, at its 12th meeting on 9 March 1983, had agreed, following the usual practice of codification conferences, to entrust to the Drafting Committee the task of preparing a draft preamble and draft final clauses and that such drafts should be reported directly to the Conference at a plenary meeting. In addition, the Committee of the Whole, at its 39th meeting held on 29 March 1983, had agreed that the Drafting Committee should submit directly to the Conference its reports on the articles referred to it by the Committee of the Whole, with the exception of three articles which had been the subject of specific requests addressed to the Drafting Committee requiring consideration by the Committee of the Whole. That procedure was in conformity with paragraph 2 of rule 47 of the rules of procedure which provided that the Drafting Committee should "report as appropriate either to the Conference or to the Committee of the Whole".

3. Thus, in the first report of the Drafting Committee (A/CONF.117/10), articles A to E constituted the final clauses adopted by the Drafting Committee and submitted to the plenary Conference in accordance with the usual practice and pursuant to the decision taken by the Committee of the Whole on 9 March. In addition, the report contained the titles and texts of articles 1 to 12, 12 *bis*, 13, 14, 16 to 22, 24, 24 *bis*, 25, 26 and 28 to 39 as adopted by the Drafting Committee and referred directly to the plenary pursuant to the above-mentioned decision of the Committee of the Whole,

4. As to the procedure to be followed, it was his intention to give the floor to the Rapporteur of the Committee of the Whole to introduce that Committee's report and then to the Chairman of the Drafting Committee to introduce the first report of the Drafting Committee. He would then submit each article to the Conference, in numerical order, for its decision. The articles retained their numbering for the moment, to facilitate their identification at the plenary stage, but it went without saying that such articles as article 12 *bis* and 24 *bis* would be numbered in the correct order in the final text of the convention, and other articles would be renumbered accordingly. The titles of the various Parts and sections of the convention, as well as the title of the convention, would not be submitted for decision until after all the articles and the preamble had been adopted.

5. The majorities required for decisions of the Conference were specified in rule 34 of the rules of procedure. Decisions of the Conference on all matters of substance would be taken by a two-thirds majority of the representatives present and voting; decisions of the Conference on matters of procedure would be taken by a majority of the representatives present and voting; and, if the question should arise as to whether a matter was one of procedure or one of substance, the President of the Conference would rule on the question. An appeal against such a ruling would be put to the vote immediately and the President's ruling would stand unless overruled by a majority of the representatives present and voting.

6. He invited the Rapporteur of the Committee of the Whole to introduce the report of that Committee.

7. Mrs. THAKORE (India), Rapporteur of the Committee of the Whole, said that the Committee's report (A/CONF.117/11 and Add.1-12) followed closely the pattern of the reports of previous codification conferences; it was a comprehensive document, containing a record of the discussions on the basic proposal, namely, the draft articles on succession of States in respect of State property, archives and debts adopted by the International Law Commission at its 33rd session (A/CONF.117/4).[1] The report reproduced the texts of all the amendments submitted to the draft articles and the Committee's final decisions thereon. The report showed that the Committee of the Whole had discussed the draft mainly article by article, in the numerical order of the articles and the related amendments. As a result of the Committee's decision to take up Part I (General provisions), namely articles 1 to 6,

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[1] See sect. B of vol. II.

at the concluding stage of its work, the proceedings relating to those six articles were to be found at the end of chapter II (A/CONF.117/11/Add.10). For the rest, the report dealt with the articles in the order of numbering.

8. In accordance with the decision taken by the Committee of the Whole at its 39th meeting, the Drafting Committee would submit directly to the plenary its report on the articles referred to it, in conformity with rule 47 of the rules of procedure, with the exception of articles 15, 23 and 27, on which the Drafting Committee had already submitted its recommendations on specific drafting points; those recommendations had been approved by the Committee of the Whole at its 42nd meeting. The Drafting Committee would also submit to the plenary its report on the drafts of the preamble and the final clauses, the preparation of which had been entrusted to it by the Committee of the Whole at its 12th meeting on 9 March 1983. A checklist of the documents submitted to the Committee of the Whole would be included in the final version of the report, which would be reproduced in the printed official records of the Conference. She added that the report was to be read in conjunction with the corresponding summary records of the Committee of the Whole.

9. The PRESIDENT invited the Chairman of the Drafting Committee to introduce the report of that Committee.

10. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the first report of the Drafting Committee (A/CONF.117/10) contained the titles and texts adopted by that Committee for articles 1 to 12, 12 *bis*, 13, 14, 16 to 22, 24, 24 *bis*, 25, 26 and 28 to 39. In view of the specific request addressed to it by the Committee of the Whole with regard to articles 15, 23 and 27, the titles and texts adopted by the Drafting Committee for those three articles had been submitted to the Committee of the Whole and, as adopted by that Committee, were before the plenary (A/CONF.117/10/Add.1).

11. Document A/CONF.117/10 also contained the titles of the Parts of the draft and the sections thereof, as well as the title of the convention, as adopted by the Drafting Committee. In addition, it included the titles and texts adopted by the Drafting Committee for articles A to E (Final provisions), on which the Committee had been requested to report direct to the plenary by a decision of the Committee of the Whole taken at its 12th meeting.

12. Commenting on a question to which the Drafting Committee had paid particular attention and the resolution of which had implied consequential changes throughout the draft, he referred to the statement he had made at the 26th meeting of the Committee of the Whole, when he had drawn attention to the problem that had arisen during the Drafting Committee's consideration of article 13 concerning the relationship between the expression "State property of the predecessor State" and the definition of "State property" found in article 8; analogous questions had arisen in connection with other articles, particularly article 19 and article 31. Pursuant to the authorization given by the Committee of the Whole to the Drafting Committee to deal with those problems, the members of the Drafting Committee had found it possible to agree on a solution which consisted of making a change, strictly of a drafting nature, in both articles 8 and 19, so as to make more explicit the generally agreed meaning attributed to the definitions contained therein. That had been achieved by adding the words "of the predecessor State" after the expressions "State property" in article 8 and "State archives" in article 19, words which had already been used to qualify those two expressions in several other articles in each of Parts II and III. Such drafting precision had been generally found appropriate for articles 8 and 19 in view of the reference in both articles to the internal law of the predecessor State, a reference which did not however appear in article 31 concerning the definition of "State debt". In the event, the Drafting Committee had agreed that the general understanding of the meaning of the provision of article 31 could properly be made more explicit by simply adding the word "predecessor" between the indefinite article "a" and the noun "State" in the phrase "financial obligation of a State". In consequence of the drafting changes in those definitional articles, the words "of the predecessor State", already embodied in several articles, had been added to the text of individual articles throughout the draft, as and where appropriate, so as to ensure the harmonization of the corresponding provisions in the draft as a whole.

13. The PRESIDENT invited the Conference to consider the texts and titles of articles adopted by the Drafting Committee.

Article 1 (Scope of the present Convention)

14. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, pointed out that, with the exception of the changes mentioned in his general remarks, no changes had been made to the title or text of article 1. The Drafting Committee wished, however, to confirm the generally held view that the phrase "State property, archives and debts" in the English text must be given its natural and grammatically logical interpretation, which was, that the phrase in question referred to State property, State archives and State debts, as was clear in the other language versions.

15. The PRESIDENT invited the Conference to vote on article 1 as proposed by the Drafting Committee.

16. Mr. TÜRK (Austria) suggested that the English text of article 1 would be clearer if the concluding phrase was amended to read "State property, State archives and State debts". The French and Spanish texts seemed more precise than the English text.

17. Mr. SHASH (Egypt) supported the proposal of the representative of Austria. In his view, the Arabic text reflected the meaning correctly.

18. Mr. GUILLAUME (France) said that the word "*Etat*" should be used in the singular in the French text of article 1.

19. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the typographical error pointed out by the representative of France would be corrected.

20. In reply to the representative of Austria, he said that the Drafting Committee had considered the pos-

sibility of adding "State" before both "archives" and "debts", but had concluded, in agreement with its English-speaking members, that it was sufficient to mention "State" only once. The article clearly referred to State property, State archives and State debts and there could be no possible misunderstanding.

21. Mr. TÜRK (Austria) said that he would defer to the English-speaking delegations on the point he had raised but would nevertheless appreciate an explanation from one of them.

22. Mr. MARCHAHA (Syrian Arab Republic) said that he wished to enter a formal reservation with respect to the Arabic term used to render the words "State property" which, in his delegation's view, was incorrect. The reservation applied to all those articles of the draft convention where the term appeared.

23. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that, in dealing with the Arabic and Russian texts, the Drafting Committee had entrusted the task of making consequential changes to the representatives of Iraq and of the Union of Soviet Socialist Republics, respectively. In the absence of a Chinese-speaking representative, the Secretariat had been given exclusive responsibility for the Chinese text.

24. Mr. JOMARD (Iraq) said that the term referred to by the Syrian representative had been discussed at length among the Arabic-speaking delegations, all of whom, with the sole exception of the delegation of the Syrian Arab Republic, had agreed that the term in question was the most appropriate.

25. Mr. MARCHAHA (Syrian Arab Republic) said that he would not press the matter to a vote but wished to record his formal reservation.

26. Mr. EDWARDS (United Kingdom) said that the problem raised by the Austrian delegation had, of course, been discussed in the Drafting Committee. The possibility of employing the phrase "of the State" after the words "property, archives and debts", had been considered and eventually rejected as being somewhat clumsy. The meaning of the English text was quite clear and any possibility of misinterpretation would be dissipated by referring to the record of the current meeting and to the text of the International Law Commission's commentary.

The title and text of article 1 were adopted by 68 votes to none.

Article 2 (Use of terms)

27. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that no changes had been made by the Drafting Committee in the title or text of the article as referred to the Committee. As requested by the Committee of the Whole, the desirability of including definitions of the terms "State property", "State archives" and "State debt" in article 2 had been considered. The Drafting Committee had decided that it was desirable to retain definitional articles on those concepts in the relevant Parts of the draft convention, considering it more appropriate to maintain each Part as a self-contained unit including an article defining the meaning to be given to the particular subject matter dealt with in the Part in question.

The title and text of article 2 were adopted by 64 votes to none, with 6 abstentions.

28. Mr. GUILLAUME (France) said that his delegation had abstained in the voting because, for reasons explained in the Committee of the Whole, it was not satisfied with the text of paragraph 1(*a*) and did not consider that the establishment of a special category of "newly independent State" in paragraph 1(*e*) was in conformity with international law.

29. Mr. EDWARDS (United Kingdom), explaining his delegation's abstention in the voting on article 2, referred to the amendment (A/CONF.117/C.1/L.56) which it had submitted to the Committee of the Whole and ultimately withdrawn after lengthy discussion. As he had said on that occasion, the definition of "predecessor State" failed to reflect his country's practice, and paragraph 2 of article 2 was also unsatisfactory in that it failed to cover the numerous possibilities of misunderstanding which arose as a result.

Article 3 (Cases of succession of States covered by the present Convention)

30. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that no changes had been made in article 3 other than one to which he had alluded in his general remarks.

The title and text of article 3 were adopted without a vote.

31. Mr. GUILLAUME (France) said that he did not oppose the voting procedure adopted but wished it to be put on record that, had the article been put to the vote, his delegation would have abstained.

Article 4 (Temporal application of the present Convention)

32. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that no changes had been introduced in article 4 by the Drafting Committee other than those required to ensure complete alignment with the corresponding provision of the 1978 Vienna Convention on Succession of States in Respect of Treaties.[2]

The title and text of article 4 were adopted without a vote.

33. Mr. GUILLAUME (France) said that, if article 4 had been put to the vote, he would have voted against it. The French delegation interpreted the text as meaning that the convention applied only to State successions which would occur after the entry into force of the convention and between States parties to it. The convention did not reflect any obligatory custom or, *a fortiori*, any peremptory and absolute rule of public international law, described by some as *jus cogens*, a concept which, incidentally, France had never accepted.

Article 5 (Succession in respect of other matters)

34. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that no change had

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[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

been made in the title or text of article 5 beyond that mentioned in his general remarks.

The title and text of article 5 were adopted without a vote.

Article 6 (Rights and obligations of natural or juridical persons)

35. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that no change other than that already mentioned had been introduced by the Drafting Committee in article 6.

The title and text of article 6 were adopted without a vote.

Article 7 (Scope of the present Part)

36. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that, besides the change noted earlier with regard to "definitional" questions which affected article 7 and later articles, the Drafting Committee had decided to keep the article unchanged with the exception of its title. With a view to achieving greater economy and clarity, the Committee had deleted the words "the articles in" from the title only. Similar changes had been made in the titles of the corresponding articles 18 and 30 in Parts III and IV respectively.

The title and text of article 7 were adopted without a vote.

37. Mr. GUILLAUME (France) said that, if article 7 had been put to the vote, his delegation would have abstained because it considered that article to be a duplication of article 1.

Article 8 (State property)

38. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that, besides the changes, already explained, to the three "definitional" articles appearing at the beginning of Parts II, III and IV respectively, the only change made by the Drafting Committee in article 8 affected the French version, where the word *"l'expression"*, already used in article 2, had been inserted in order to highlight the definitional character of the provision. Similar changes had been made in the corresponding articles 19 and 31 in Parts III and IV, respectively.

39. On the instructions of the Committee of the Whole, the Drafting Committee had considered an amendment to article 8 submitted by France (A/CONF.117/C.1/L.5) which had not been pressed to a vote, and had agreed that the basic ideas contained in the amendment were implicitly incorporated in the text of article 8 and that there was therefore no need to add any further provision to the article. Furthermore, it had been noted that, while State archives could be considered to be State property and thus to be covered by the provisions of Part II of the convention, it was clearly established by the text of the convention, and in particular by Part III, that State archives constituted a special type of State property which warranted a special régime within the terms of the convention.

40. Replying to a question by Mr. MIKULKA (Czechoslovakia), he said that the Drafting Committee had decided to omit the words "of the predecessor State" from the title of the article although they appeared in its text, in order to keep the title short and, at the same time, sufficiently expressive. Similar action had been taken with regard to articles 19 and 31.

41. After a discussion concerning the Arabic text of the article in which Mr. MARCHAHA (Syrian Arab Republic) and Mr. SHASH (Egypt) took part, the PRESIDENT put article 8 to the vote.

The title and text of article 8 were adopted by 69 votes to none.

Article 9 (Effects of the passing of State property)

42. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Drafting Committee had amended the text of article 9 to incorporate the changes required as the result of the adoption by the Committee of the Whole of the report of the Working Group on article 32. No other changes had been made in the article with the exception of two alignments. First, the English text had been brought into line with other versions by the replacement of the phrase "to such of the State property as passes" by the phrase "to the State property which passes". Similar changes had been made in the English text of the corresponding articles 20 and 32 in Parts III and IV, respectively. The comma after the words "which passes to the successor State" should be deleted. Secondly, the French and Spanish texts had been aligned with the English text by the replacement of the words *"conformément aux"* by the words *"selon les"* and of the words *"de conformidad con"* by the word *"según"*, respectively. The same changes appeared in articles 20 and 32.

43. Mr. GUILLAUME (France) observed that the comma after the words *"l'Etat successeur"* should probably be deleted from the French version as it had been in the English.

44. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, confirmed that the comma should be removed in both the French and the Spanish versions so as to align them on the English.

45. Mr. NATHAN (Israel) said that it might be desirable to include the words "of the predecessor State" after the words "State property" so as to make the text correspond to the definition in article 8.

46. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Committee had considered the question of adding those words in the distinct context of each pertinent article and had concluded that there was no need to do so in every case. It was a question of emphasis; article 9 was concerned with the effects of passing and, clearly, once State property had passed, it was no longer the property of the predecessor State.

47. Mr. MIKULKA (Czechoslovakia) asked why the Drafting Committee had none the less chosen to include the words "of the predecessor State" in article 10, where the context was virtually identical to that of article 9.

48. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, pointed out that the phrase "of the predecessor State" in article 10 had not been inserted by the Drafting Committee; it had already been

present in the original draft article of the International Law Commission.

49. The two contexts were in fact different: article 10 was concerned with the date of the passing of State property, whereas article 9 dealt with the effects of that passing. Once the property in question had passed to the successor State, there was no longer any need to refer to it as the property of the predecessor State.

50. Mr. KOLOMA (Mozambique) noted that his concerns were similar to those voiced by the representative of Israel. He saw certain inconsistencies between the definition contained in article 8 and its application in article 9 and between the title of the definition and the body of the definition itself.

51. Article 8 defined not "State property" but specifically the State property of the predecessor State, whilst article 9 spoke only of the effects of passing of State property, without further elaboration. Since the definition in article 8 was intended to apply generally in the Part relating to State property, it was essential to ensure consistency.

52. Mr. ROSENSTOCK (United States of America) said that the suggestion for adding the words "of the predecessor State" was unfortunately correct; it would make the text rather cumbersome but was unavoidable.

53. In the original form of article 8, as drafted by the Commission, it had been clear that the definition of "State property"must mean the State property of the predecessor State, since that property was the only property subject to passing. The words "of the predecessor State" would accordingly have been redundant in subsequent articles. The decision to make the definition more specific by adding those words in article 8 however rendered it necessary to use the same wording consistently in later articles. It would therefore be preferable to include the words "of the predecessor State" at the beginning of article 9.

54. Mr. BINTOU'A-TSHIABOLA (Zaire) said that since article 7 very clearly stated that the articles in the Part in question applied to the effects of a succession of States in respect of State property of the predecessor State, he did not see that the absence of the words "of the predecessor State" in article 9 could really be a source of confusion. However he was ready to agree to their insertion if it was generally considered appropriate.

55. Mr. ECONOMIDES (Greece) said that he shared the view of the representative of the United States. If the proposed insertion was made at the beginning however the later reference to the predecessor State would become redundant and should be replaced by the words "of that State".

56. Mr. RASUL (Pakistan) said that his delegation had no difficulties with the Drafting Committee's version of article 9 as it stood. He felt that the introduction of the words "of the predecessor State" might overburden the text and lead to further complications. It was his understanding that every reference to "State property" in the context of passing was automatically a reference to the definition in article 8. If it was decided to make such a modification, however, the representative of Greece had been correct in pointing out that a consequential change would have to be made later in the text.

57. Mr. MONCEF BENOUNICHE (Algeria) said that the words which it was proposed to insert would be redundant, since the property covered by article 9 was clearly defined in article 8. The text proposed by the Drafting Committee was fully satisfactory.

58. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that he appreciated the concern for consistency voiced by a number of delegations. That had been a concern of the Drafting Committee also, and the omission of the words "of the predecessor State" in article 9 might well have been an oversight on its part. He had no objection to their insertion and agreed that, if those words were added, the later reference to the predecessor State would have to be replaced by reference to "that State".

59. He noted that the same question might arise later in connection with articles 13 to 17, which had originally contained the same expression.

60. Mr. ROSENSTOCK (United States of America) formally proposed that the words "of the predecessor State" should be inserted between the words "State property" and "entails" and that, after the words "the extinction of the rights", the phrase "of the predecessor State" should be replaced by the words "of that State".

61. The PRESIDENT invited the Conference to vote on the oral amendment of the United States.

The amendment was adopted by 37 votes to none with 26 abstentions.

62. Mr. JOMARD (Iraq) said that the Arabic version of article 9 was not sufficiently clear. He proposed that the term "*yu'addi ila*" should be used instead of "*yastatbi'*" as a translation for the English word "entails".

63. Mr. SHASH (Egypt) said that the proposal of the representative of Iraq would be a considerable improvement of the Arabic text.

64. Mr. TARCICI (Yemen) said that he also supported the revision proposed by the representative of Iraq.

65. Mr. A. BIN DAAR (United Arab Emirates) said that it was not clear to him why the latter part of article 9 had been drafted in the form in which it stood. The following formulation would have been better: ". . . State property which, subject to the provisions of the articles in the present Part, passes to the successor State".

66. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the text submitted by the Committee was the outcome of long and difficult negotiation. The expression "subject to the provisions of the articles in the present Part" in English had a number of connotations and had the particular advantage of being very neutral. If it had been placed in any other position in the article, however, it could have been taken as referring back not only to "passing" but also to "extinction" and "arising" of rights and might also have had a negative implication, shifting the em-

phasis to the idea that property did not pass unless provided for by the articles of the present Part.

67. As it stood, the English text had proved acceptable to all members of the Drafting Committee.

68. Mr. THIAM (Senegal) said that, in the French version of article 9, the expression *"conformément aux"* would be preferable to *"selon"*. The former expression was more precise and its use had never been contested in the Committee of the Whole.

69. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, noted that many members of the Drafting Committee, and he personally, had expressed a preference for *"conformément aux"*, which had corresponded to the English phrase "in accordance with" in the Commission's draft article. Had the Drafting Committee had a free hand, it would have retained both those wordings but, since the version in English—the drafting language—had been changed to "subject to" before the article had been referred to the Drafting Committee, it had then become necessary to modify the French and Spanish versions for the sake of concordance. The correct French equivalent of "subject to" was *"sous réserve de"*. However, that expression was less flexible and for that reason the Drafting Committee had eventually—as he had mentioned in his remarks introducing article 9—opted for the word *"selon"* in the French version and for *"según"* in the Spanish.

70. Mr. MUCHUI (Kenya) said that he wished to place on record that his delegation had favoured the original English wording "in accordance with" and had accepted "subject to" only reluctantly as part of a package.

71. Mr. ROSENSTOCK (United States of America) stressed that the words "subject to" had been an essential element in reaching agreement on a package which had related to three articles and had enabled certain delegations to withdraw a number of amendments. It was thus absolutely necessary to retain that wording in English in article 9 and in other parts of the convention.

72. Mr. ROMANOV (Executive Secretary of the Conference) recalled that it had been suggested that the French and Spanish equivalents of the term "subject to" in article 9, and also the Arabic translation of "entails", should be changed.

73. Mr. THIAM (Senegal) considered that, in the French text of the article, the expression *"conformément aux"* was preferable to *"sous réserve des"*.

74. Mr. GUILLAUME (France) said that the existing text was indeed unsatisfactory since *"sous réserve des"* did not fully convey the meaning of "subject to". Some delegations had expressed a preference for *"conformément aux"*, but he pointed out that that phrase was not equivalent to "subject to". He therefore suggested the translation *"sous les conditions prévues par"*.

75. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the problem did not arise in the English text, since the phrase "subject to" had been decided upon in the Committee of the Whole after lengthy discussion. Consultations with the French- and Spanish-speaking delegations had, however, revealed that there were strong objections to *"sous réserve des"* and *"salvo"* as equivalents of the expression.

76. Mr. THIAM (Senegal) said that it was not his impression that the wording "subject to" had been arrived at by the Committee of the Whole and that the term *"conformément aux"* was in any case preferable on its own merits. He would not, however, press the point.

77. Mr. MONNIER (Switzerland) drew attention to the fact that, in articles 8 and 12 *bis*, the French equivalent of the phrase "according to" was *"conformément aux"*. It would therefore be inappropriate to render "subject to" in article 9 by the same French expression.

78. Mr. BINTOU'A-TSHIABOLA (Zaire) and Mr. ASSI (Lebanon) said that they shared the same misgivings as the representative of France regarding *"sous réserve des"*, and agreed that *"sous les conditions prévues par"* was preferable.

79. Mr. PASTOR RIDRUEJO (Spain) said that, taking the French delegation's proposed wording as a basis, the phrase "subject to" could be rendered in Spanish by *"con sujeción a las disposiciones de"*.

80. The PRESIDENT pointed out that, in the text of article 9 as submitted by the International Law Commission (A/CONF.117/4), there were no commas, but that a comma appeared between "State" and "subject to" in the revised draft proposed by the Drafting Committee. He wondered whether the comma should be eliminated.

81. Mr. ROSENSTOCK (United States of America) considered that the comma was grammatically important in the English text and should be retained.

82. Mr. PASTOR RIDRUEJO (Spain) said that he felt that the comma should also be retained in the Spanish version.

83. Mr. GUILLAUME (France) said that the words *"sous les conditions prévues par"* constituted a dependent clause qualifying *"qui passent"* and that the comma was redundant in the French text.

84. Mr. SHASH (Egypt) said that, in voting on the article, his delegation would take the English text as the basis for its vote. The proposed French and Spanish versions would, however, prove useful in sorting out drafting difficulties in the Arabic text, which would be finalized through consultations among the Arabic-speaking delegations.

85. The PRESIDENT invited the Conference to proceed to a vote on article 9 as orally amended and revised.

The title and text of article 9 were adopted by 68 votes to none.

86. The PRESIDENT said that a number of delegations wished to explain their votes.

87. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the article on the understanding that the "extinction" and "arising" of rights referred to in the article were simultaneous

events and that the State property would pass together with any obligations attaching thereto. In the Committee of the Whole his delegation had abstained in the voting on article 9 for the reasons it had stated at the time. He recalled that those reasons related to the unsatisfactory nature of the terms "extinction" and "arising" of rights.

88. Mr. RASUL (Pakistan) said that his delegation had regarded the amendment proposed by the United States as being of little importance and had therefore abstained in voting on that amendment. It had however voted in favour of the article as amended.

89. Mr. GUILLAUME (France) said that his delegation had voted in favour of the article for the reasons stated by the United Kingdom and subject to the same reservations.

90. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation shared the views expressed by the United Kingdom. It also wished to draw attention to its earlier statements on article 9 in the discussions in the Committee of the Whole.

91. Mr. AL-KHASAWNEH (Jordan) said that his delegation had voted in favour of article 9 but that it did not consider that the notions of concomitance or simultaneity should be read into the article.

92. Mr. TARCICI (Yemen) said that the Arabic text should only be considered as having been formally adopted after the Arabic-speaking delegations had met to consult on the most appropriate wording in Arabic.

The meeting rose at 6.10 p.m.

7th plenary meeting

Wednesday, 6 April 1983, at 10.55 a.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*)

[Agenda item 11]

Arabic version of the draft convention

1. Mr. SHASH (Egypt), speaking on behalf of the Arabic-speaking group of delegations, proposed that, in order to save the time of the Conference and still produce a text acceptable in all languages, the Arabic-speaking group should review the Arabic version of the draft convention in collaboration with the Secretariat.

2. Mr. JOMARD (Iraq), supporting the proposal of the Egyptian representative, said that the text of the Arabic version of the draft convention contained a number of errors. He himself had submitted a number of corrections and had prepared some text for the secretariat of the Conference. The secretariat had, however, retained the original Arabic text. Account should be taken of the corrections submitted by the Arabic-speaking delegations. He would submit his comments again to the Secretariat.

3. The PRESIDENT took note of the statements made by the representatives of Egypt and Iraq.

Reports of the Drafting Committee (*continued*) (A/CONF.117/10 and Add.1-3)

Report of the Committee of the Whole (*continued*) (A/CONF.117/11 and Add.1-12)

Article 10 (Date of the passing of State property)

The title and text of article 10 were adopted without a vote.

Article 11 (Passing of State property without compensation)

4. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Drafting Committee, as a consequence of its decision relating to draft articles containing definitions and taking into account an oral amendment to article 11 which had been referred to it, had decided to replace the phrase "State property from the predecessor State" in the English version of the article by the phrase "State property of the predecessor State".

The title and text of article 11 were adopted without a vote.

Article 12 (Absence of effect of a succession of States on the property of a third State)

The title and text of article 12 were adopted without a vote.

Article 12 bis (Preservation and safety of State property)

5. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Committee had decided to rearrange the order of certain phrases in order to improve the clarity of the article and achieve a greater degree of precision in its wording. Thus, in the English version, the final phrase "which, according to the provisions of the articles of the present Part, passes to the successor State" had been revised to read "which passes to the successor State in accordance with those provisions". Corresponding revisions had been made in the other language versions. He wished, however, to emphasize that those changes did not alter the substance of the article. In addition, in the French and Spanish versions of the title the words "*sauvegarde*" and "*salvaguardia*" had been replaced by "*préservation*" and "*conservación*" respectively, in

order more faithfully to reflect the original English version. Similarly the words *"propres"* and *"adecuadas"* which had appeared in the French and Spanish versions, respectively, had been deleted, since an equivalent did not appear in the original English version. The Drafting Committee had made similar changes in the analogous article 24 *bis*.

6. The PRESIDENT said that he had been requested to put article 12 *bis* to the vote although it had been adopted in the Committee of the Whole without a vote.

The title and text of article 12 bis *were adopted by 59 votes to none, with 7 abstentions.*

7. Mr. MONNIER (Switzerland), speaking in explanation of vote, said that his delegation had abstained in the vote on article 12 *bis* which, in its view, should not appear in the Convention. It presumed the possibility of illegal behaviour on the part of the predecessor State, which was not in harmony with the duty imposed by international law on all States to carry out their obligations in good faith.

8. Mr. NATHAN (Israel) said that his delegation had also abstained in the vote on article 12 *bis*. He referred the Conference to the views expressed by his delegation during the discussion on that article in the Committee of the Whole (42nd meeting).

9. Mr. KIRSCH (Canada) asked how it had been calculated that the number of delegations voting in favour of article 12 *bis* was 59.

10. Mr. ROMANOV (Executive Secretary of the Conference) read out rule 35 of the rules of procedure in which it was stated that representatives who abstained from voting should be considered as not voting. The number of those representatives present and voting was therefore the same as the number of those who had voted in favour of the article, namely 59.

11. Mr. A. BIN DAAR (United Arab Emirates) expressed his surprise that article 12 *bis* had been put to the vote. As he understood it, the Committee of the Whole had adopted that article by consensus. The Conference should have been asked if there was any objection to the article being so adopted in the plenary meeting.

12. The PRESIDENT observed that a number of draft articles immediately following article 12 *bis* were still under consideration with a view to the development of compromise texts. He therefore suggested that the Conference should defer its consideration of those articles and proceed to consider draft article 18.

It was so decided.

Article 18 (Scope of the present Part)

The title and text of article 18 were adopted without a vote.

Article 19 (State archives)

13. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, referred to his general remarks at the previous meeting on the subject of the definition of terms. The Drafting Committee had added the expression "of the predecessor State" after the words "State archives".

The title and text of article 19 were adopted by 68 votes to none.

14. Mr. BROWN (Australia) inquired whether it was necessary to vote on an article to which there was no opposition.

15. The PRESIDENT observed that a vote had been taken on article 19 in the Committee of the Whole.

16. Mr. HAWAS (Egypt) said that his delegation had voted in favour of article 19, bearing in mind that it was a compromise text. He referred to the reservations his delegation had expressed at the time of the adoption of the article in the Committee of the Whole, mainly with regard to the phrase "according to its internal law".

17. Mr. OESTERHELT (Federal Republic of Germany) referred the Conference to the views expressed by his delegation during the discussion of article 19 in the Committee of the Whole. It was his delegation's understanding that the phrase "preserved by it . . . as archives" must be interpreted in the light of the internal law of the predecessor State.

18. Mr. RASUL (Pakistan) referred the Conference to the views expressed by his delegation during the discussion of the article in the Committee of the Whole (19th meeting).

19. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had voted in favour of article 19. He referred the Conference to the views expressed by his delegation during the discussion of the article in the Committee of the Whole (27th meeting).

20. Mr. GUILLAUME (France) referred the Conference to the views expressed by his delegation during the discussion of article 19 in the Committee of the Whole (19th meeting).

21. Mr. MONCEF BENOUNICHE (Algeria) also referred the Conference to the views expressed by his delegation during the discussion of article 19 in the Committee of the Whole (18th, 19th and 20th meetings).

22. Mr. BARRERO-STAHL (Mexico) said that his delegation had voted in favour of article 19. He referred the Conference to the views expressed by his delegation during the discussion of the article in the Committee of the Whole (18th meeting).

23. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of article 19. He referred the Conference to the views expressed by his delegation during the discussion of that article in the Committee of the Whole (18th, 19th and 27th meetings) and particularly to his delegation's understanding that the preservation of the State archives under article 19 would be governed by the internal law of the predecessor State.

24. Mr. KOLOMA (Mozambique) said that his delegation had voted in favour of article 19 for the sake of compromise and had already, at the 18th meeting of the Committee of the Whole, expressed its reservations on the two points mentioned by the representative of Egypt. It had particularly strong reservations with regard to the reference in the article to the internal law of the predecessor State, and to the inclusion in the text of the expression "as archives".

25. Mr. MAAS GEESTERANUS (Netherlands) suggested that, if the articles not to be discussed at the current meeting were those for which the President was hoping that a compromise wording would be found, the articles on the settlement of disputes might also be included with them.

26. Mr. SHASH (Egypt) said that, while his delegation had accepted without comment the President's proposal to postpone the discussion on a number of articles, it should not be assumed that his delegation was ready to discuss them at a later stage with a view to reaching a compromise.

Article 20 (Effects of the passing of State archives)

27. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, pointed out that, as he had indicated at the previous meeting, the changes made in article 9 also applied to article 20.

The title and text of article 20 were adopted by 72 votes to none.

28. Mr. GUILLAUME (France) said that his delegation had voted in favour of article 20 in the light of the statements made and the interpretations given during the consideration of the article in the Committee of the Whole. He also referred the Conference to the views expressed by his delegation during the consideration in the Committee of the Whole of articles 6, 8, 9, 12, 12 *bis*, 20, 21, 24 *bis* and 32 (1st, 2nd, 4th, 7th, 9th, 21st, 22nd, 33rd, 35th and 42nd meetings). Those views should be taken as reflecting his delegation's position on those articles in the plenary meeting.

29. Mr. MUCHUI (Kenya) said that his delegation had had no alternative but to vote in favour of article 20 because it had been involved in the negotiations which had resulted in the present text of the article. The Kenyan delegation considered however that the replacement of the words "in accordance with" by "subject to" had been most unfortunate and was acceptable only as a means of ensuring the maintenance of the compromise agreed upon. The phrase gave the impression that some of the provisions in the articles of Part III provided for exceptions to the general rule in article 20, although that was not in fact the case. That comment of his delegation did not apply to article 32, where the change had been justifiably introduced, but it did apply to article 9.

30. Mr. HAWAS (Egypt) said that his delegation had voted in favour of article 20 but regretted that a comma had been inserted immediately before the words "subject to" as it had also been in article 9. The text of article 20 as agreed upon in the negotiations which had taken place had included no such comma. He referred the Conference to the view expressed by his delegation during the discussions at the 42nd meeting of the Committee of the Whole and in the Group of 77 that the amendments to article 32 which had been agreed upon should be restricted to that article and should not apply also to articles 19 and 20 since, for the reasons already given by the representative of Kenya, they were not relevant there.

31. Mr. HAYASHI (Japan) said that, following General Assembly practice, his delegation had not considered it necessary to repeat in plenary meeting reservations which it had expressed in the Committee of the Whole. However, since many other delegations had already done so, his delegation wished to confirm that the reservations it had expressed in the Committee of the Whole (21st and 22nd meetings) applied to all the relevant articles when they were discussed in plenary meeting.

32. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of article 20. He referred the Conference to the views expressed by his delegation when that article had been discussed in the Committee of the Whole (20th meeting), as well as to those it had expressed the previous day during the discussions of article 9 at the 6th plenary meeting.

33. Mr. BEN SOLTANE (Tunisia) said that his delegation had voted in favour of article 20 as a compromise. In the opinion of his delegation, the phrase "subject to the provisions" had the same meaning as "in accordance with the provisions".

34. Mr. OESTERHELT (Federal Republic of Germany) referred the Conference to the views his delegation had expressed during the discussions in the Committee of the Whole on articles 9, 20 and 32 regarding the notion of "continuity" inherent in the concept of "passing" and regarding the protection of the rights of third States in respect of property and archives passing (2nd, 9th, 10th, 22nd and 34th meetings). Those views reflected the position which his delegation took on those articles in the plenary meeting of the Conference.

35. Mr. KADIRI (Morocco) said that his delegation had voted in favour of article 20 as it had in the Committee of the Whole. In his delegation's view the expression "subject to" used in article 20 should be understood as meaning "in accordance with".

36. Mr. THIAM (Senegal) said that his delegation fully supported the statement made by the representative of Tunisia. He referred the Conference to the views expressed by his delegation during the discussion of article 20 in the Committee of the Whole (20th and 22nd meetings).

Article 21 (Date of the passing of State archives)

The title and text of article 21 were adopted without a vote.

Article 22 (Passing of State archives without compensation)

37. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the changes made in article 11, to which he had already drawn attention, had also been made in article 22.

The title and text of article 22 were adopted without a vote.

Article 23 (Absence of effect of a succession of States on the archives of a third State)

The title and text of article 23 were adopted without a vote.

Article 24 (Preservation of the integral character of groups of State archives)

38. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Committee

had focused its attention on rendering effectively into English the intended meaning of the original French phrase *"la sauvegarde de l'intégrité des fonds d'archives d'Etat"* which appeared both in the title and text of article 24. The Committee had adopted the following text as the English equivalent: "preservation of the integral character of groups of State archives".

39. Mr. CHOI (Republic of Korea) said that his delegation had abstained in the vote on article 24 in the Committee of the Whole for the reasons it had given at the Committee's 26th meeting. In a spirit of compromise, however, it would not object to the adoption of the article without a vote in plenary meeting.

The title and text of article 24 were adopted without a vote.

40. Mr. GUILLAUME (France) said that his delegation, which had joined the consensus on article 24, wished to reiterate its position that the principle embodied in that article was not affected by the provisions of other articles of the draft convention.

41. Mr. RASUL (Pakistan) said that his delegation had also joined the consensus on the article. Recalling that his delegation had submitted a proposal that article 24 be deleted, he referred the Conference to all the statements made by his delegation during the discussion of that article in the Committee of the Whole (24th, 25th and 26th meetings).

42. Mr. KADIRI (Morocco) observed that, in the Committee of the Whole, his delegation had submitted an oral amendment (25th meeting) to the International Law Commission's text of article 24. In his delegation's view, respect for the principle of the integral character of groups of State archives was essential to the preservation of the value of archives as titles, as evidence and as legal and historical records.

Article 24 bis (Preservation and safety of State archives)

43. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the changes made in article 12 *bis*, to which he had already drawn attention, had also been made in article 24 *bis*.

The title and text of article 24 bis *were adopted without a vote.*

44. Mr. GUILLAUME (France) said that, in view of the vote on article 12 *bis*, his delegation had not opposed the consensus on article 24 *bis*. Had a vote been taken on article 24 *bis*, however, his delegation would have abstained, as it had done in the vote on article 12 *bis*.

45. Mr. RASUL (Pakistan) drew attention to the statement made by his delegation in the Committee of the Whole in explanation of its vote in that Committee on article 24 *bis* (42nd meeting).

46. Mr. KEROUAZ (Algeria) referred to the reservations expressed by his delegation in the Drafting Committee concerning article 24 *bis*.

47. Mr. EDWARDS (United Kingdom) said that the position of his delegation with regard to article 24 *bis* was the same as that indicated by the representative of France.

48. Mr. MONNIER (Switzerland) said that his delegation had not opposed the consensus on article 24 *bis*. However, had the article been put to the vote, his delegation would have abstained, as it had done in the vote on article 12 *bis*, for the reasons it had given after that vote.

49. Mr. A. BIN DAAR (United Arab Emirates) referred the Conference to the views expressed by his delegation prior to the adoption of article 24 *bis* in the Committee of the Whole (*ibid.*).

50. Mr. NATHAN (Israel) said that, had article 24 *bis* been put to the vote, his delegation would have abstained, for the reasons it had given at the time of the vote on article 12 *bis* (*ibid.*).

51. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation had not wished to oppose the consensus on article 24 *bis*. However, had a vote been taken on that article, it would have abstained, for the reasons it had explained at the 38th and 42nd meetings of the Committee of the Whole.

Article 30 (Scope of the present Part)

52. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the changes made in article 7, which he had explained at the previous meeting, applied also to article 30.

The title and text of article 30 were adopted without a vote.

Article 32 (Effects of the passing of State debts)

53. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the changes made in article 32 had already been explained in respect of articles 9 and 20.

The title and text of article 32 were adopted without a vote.

54. Mr. HAWAS (Egypt) said that his delegation had joined in the consensus on article 32, but it wished to refer the Conference to the views expressed by his delegation both on its own behalf and on behalf of the Group of 77, during the discussion on the consensus text of article 32 in the Committee of the Whole (39th meeting).

55. Mr. RASUL (Pakistan) referred the Conference to the statements made by his delegation in connection with articles 8 *bis*, 19 *bis*, 31 *bis* and 32 in the Committee of the Whole (9th, 22nd and 39th meetings).

56. Mr. KADIRI (Morocco) reiterated his delegation's understanding that the words "subject to" in the article had the meaning of "in accordance with".

57. Mr. GUILLAUME (France) asked whether the alignment of the text of article 32 with the text of articles 9 and 20 also involved the insertion of the words "of the predecessor State" before the word "entails".

58. Mr. MIKULKA (Czechoslovakia) and Mr. KOLOMA (Mozambique) considered that the insertion of those words in article 32 would be justified.

59. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Drafting Committee had devoted considerable attention to the question of definitions. The definitions of State property and

State archives referred explicitly to the internal law of the predecessor State, whereas the definition of State debt did not. It was nevertheless clear that such State debts as did pass would be those of the predecessor State.

60. Mr. GUILLAUME (France) said that, while he did not wish to challenge the decision just taken on article 32, he had been labouring under a misapprehension concerning the text adopted: in order to avoid a recurrence of such misunderstandings, he suggested that the text of the draft articles should be read out before they were adopted.

61. Mr. KEROUAZ (Algeria) said that his delegation wished to confirm its understanding that article 32 excluded the passing of odious debts to the successor State; that interpretation brought article 32 fully into line with article 36.

62. Mr. ABED (Tunisia) said that his delegation interpreted the expression "subject to" as meaning "in accordance with". He considered it desirable to reach a formal agreement on the meaning of that expression.

63. Mr. ROSENSTOCK (United States of America) said that the International Law Commission in its wisdom had refrained from formulating a specific provision relating to odious debts. The changes made in article 32 had not been for the purpose of making provision for the treatment of odious debts, which were outside the framework of the draft convention.

64. Mr. OESTERHELT (Federal Republic of Germany) referred the Conference to the statement made by his delegation at the 31st meeting of the Committee of the Whole. The International Law Commission, for good reasons, had decided not to include in the draft convention a provision concerning so-called "odious debts". In his delegation's view, the Commission's decision should not be called into question. It was its understanding that the draft convention contained no provision relating to odious debts.

65. Mr. GUILLAUME (France) associated himself with the views expressed by the representatives of the United States of America and the Federal Republic of Germany.

66. Mr. MONCEF BENOUNICHE (Algeria) said that his delegation had made its views clear on several occasions; it wished to reserve its position concerning the interpretation given by certain delegations to the provisions of certain articles of the draft convention. His delegation's silence should in no way be taken as implying agreement with those interpretations.

Article 33 (Date of the passing of State debts)

The title and text of article 33 were adopted without a vote.

67. Mr. MIKULKA (Czechoslovakia) said that his delegation interpreted the fact that the words "of the predecessor State" appeared after "State debts" in article 33 as meaning that those words were included by inference in article 32.

Article 34 (Absence of effect of a succession of States on creditors)

68. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the title of the article had been altered to take account of the deletion by the Committee of the Whole of the original paragraph 2. For the new title, the Drafting Committee had drawn inspiration from the title of article 12. The text of the article now corresponded to that of the original paragraph 1.

The title and text of article 34 were adopted without a vote.

69. Mr. HAWAS (Egypt), explaining the position of his delegation, said that it had joined in the consensus in order that article 34 might be adopted without a vote. It wished, however, to express its regret that it had not proved possible to include the original paragraph 2 in article 34 in an acceptable form. His delegation believed that the content of that paragrah could have been incorporated in the draft convention within the framework of international law.

70. Since it had not been possible to reach agreement on paragraph 2, his delegation had accepted the article in its present form as the best possible alternative, bearing in mind the importance of including in the draft convention a safeguard clause to protect creditors.

71. Mr. OESTERHELT (Federal Republic of Germany) referred the Conference to the statement his delegation had made at the 38th meeting of the Committee of the Whole. It was the understanding of his delegation that article 34 referred *a fortiori* to agreements between the parties to a succession of States.

72. Mr. BARRERO-STAHL (Mexico) said that his delegation would have preferred article 34 to have remained in the form in which it had been proposed by the International Law Commission. It was for that reason that, in the Committee of the Whole, his delegation had voted against the amendment to delete paragraph 2, including its subparagraphs (*a*) and (*b*).

73. Mr. RASUL (Pakistan) observed that it was his delegation which had proposed the deletion of the former paragraph 2(*a*) of article 34. He referred the Conference to the statements made by his delegation during the discussion of article 34 in the Committee of the Whole (35th, 38th and 39th meetings).

74. Mr. KADIRI (Morocco) said that, although his delegation had not objected to the adoption of article 34 by consensus, it wished to place on record its view that the protection of creditors was essentially a question of international commercial law and could in no way be considered a matter for regulation by public international law.

75. Mr. ASSI (Lebanon) said that, had a vote been taken on article 34, his delegation would have had to abstain, since the deletion of the original paragraph 2 adversely affected the understanding of what remained of the article.

76. The PRESIDENT invited the Chairman of the Drafting Committee to introduce the concluding part of the draft convention, containing the final provisions.

77. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that articles A, B, C and D, dealing with signature, ratification, accession and entry into force, respectively, had been prepared by the Drafting Committee on the basis of a proposal by Brazil

(A/CONF.117/C.1/L.24) and of a background document prepared by the Secretariat which set forth the precedents for final clauses in seven previous codification conventions.

78. The four articles now submitted were similar to the corresponding ones in Part VII (Final provisions) of the 1978 Vienna Convention on Succession of States in Respect of Treaties.[1] The letters A, B, C and D identifying the four articles were, of course, provisional; those articles would be given appropriate numbers when the whole convention was adopted with a single numeration.

Article A (Signature)

The title and text of article A were adopted without a vote.

Article B (Ratification)

The title and text of article B were adopted without a vote.

Article C (Accession)

The title and text of article C were adopted without a vote.

79. Mr. GUILLAUME (France) noted that it would be possible to sign the future convention only until 30 June 1984. According to article C, accession would be possible only thereafter. That being so, he asked the secretariat whether accession to the Convention would be possible after 30 June 1984 but before the instrument's entry into force.

80. Mr. FLEISCHHAUER (Legal Counsel, Representative of the Secretary-General of the United Nations) explained that there would be no gap, namely, no period during which neither signature nor accession was possible. Upon expiry of the time limit for signature, accession to the convention would immediately be possible.

Article D (Entry into force)

81. Mr. MAAS GEESTERANUS (Netherlands) noted that the figure of 15 instruments of ratification or accession mentioned in paragraph 1 of article D as the requirement for entry into force of the convention followed the precedent of article 49 of the 1978 Vienna Convention on Succession of States in Respect of Treaties.

82. His delegation found that number of instruments of ratification or accession unduly small for the purposes of the present convention and, as an oral amendment[2] it proposed that, in the concluding portion of paragraph 1 of article D, the word "fifteenth" should be replaced by "thirty-fifth", thus bringing the provision into line with the corresponding provisions of the 1969 Vienna Convention on the Law of Treaties and the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations. It was worth noting that the relevant articles of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations required a minimum of 22 ratifications or accessions. The most recent world-wide codification convention, the 1982 Convention on the Law of the Sea, specified that 60 instruments of ratification or accession were required for its entry into force.

83. It should be borne in mind that the present draft convention contained a number of provisions which could affect the rights of third parties, as had been explained by the Expert Consultant. Bearing in mind that States not parties to the Convention might thus be affected by it, the requirement of 15 ratifications or accessions appeared unduly low and his delegation urged that it should be replaced by the much more appropriate requirement of 35 such instruments.

84. Mr. KADIRI (Morocco) said that in his delegation's view the requirement of 15 ratifications or accessions was entirely satisfactory. It had been adopted in the perspective of a dynamic codification and progressive development of international law, so as to facilitate the early entry into force of the Convention, which would thus become positive law within a reasonable lapse of time.

85. His delegation drew attention to the fact that the requirement of 35 ratifications or accessions adoted in connection with the 1969 Vienna Convention on the Law of Treaties had delayed its entry into force by 11 years—a delay which had certainly not assisted the development of the international law of treaties.

86. Mr. SUÁREZ de PUGA (Spain), supporting the amendment proposed the Netherlands delegation, said that the figure of 35 ratifications or accessions was more in conformity with international custom than that of 15. It would, moreover, have the advantage of strengthening the authority of the Convention.

87. Mr. MONCEF BENOUNICHE (Algeria) said that his delegation strongly supported the remarks of the Moroccan representative. The requirement of 15 ratifications or accessions was quite sufficient. As for the concern expressed by the Netherlands representative regarding the position of third party States, it could easily be allayed by drawing attention to the presence in the draft convention of various safeguard clauses which protected the rights of those States.

88. Mr. SHASH (Egypt) said that the requirement of 15 ratifications or accessions was quite sufficient. The adoption of the proposed formula would speed up the process of codification and progressive development of international law.

89. The instrument now under discussion was a twin convention to the 1978 Vienna Convention. It was therefore logical to require for the entry into force of both of them the same number of instruments of ratification or accession.

90. He appealed to all delegations to urge their government to ratify the proposed convention as early as possible, so that it might enter into force at an early date and contribute to the codification and progressive development of international law.

The meeting rose at 1 p.m.

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

[2] Subsequently issued under the symbol A/CONF.117/L.4.

8th plenary meeting

Wednesday, 6 April 1983, at 3.20 p.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

In the absence of the President, Mrs. Tychus-Lawson (Nigeria), Vice-President, took the Chair.

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*)

[Agenda item 11]

REPORTS OF THE DRAFTING COMMITTEE (*continued*) (A/CONF.117/10 and Add.1-3)

REPORT OF THE COMMITTEE OF THE WHOLE (*continued*) (A/CONF.117/11 and Add.1-12)

Article D (Entry into force) (*continued*)

1. The PRESIDENT said that at the previous meeting the delegation of the Netherlands had proposed an amendment[1] to the Drafting Committee's text of article D to the effect that the convention should enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession. It was to be noted that the amendment was exclusively concerned with the number of ratifications and she thought that the Conference could consider it before it was circulated as a document.

2. Mr. BEN SOLTANE (Tunisia) said that the article as submitted to the Conference by the Drafting Committee was quite acceptable to his delegation. The convention under consideration should be regarded as a continuation of the 1978 Vienna Convention on the Succession of States in respect of Treaties,[2] and the number of 15 ratifications required under article 49 of that instrument should be regarded as a satisfactory precedent for the convention on succession of States in respect of State property, archives and debts.

3. Mr. do NASCIMENTO e SILVA (Brazil) pointed out that, in the discussions which had preceded the adoption of the 1978 Vienna Convention, differing opinions had been expressed as to the number of ratifications needed for its entry into force and that the number of 15 had in itself been a compromise. It would be desirable to avoid a repetition of the controversies which had arisen at that time. The reason for not requiring a large number of ratifications was that there was a strong possibility that the long period between adoption of the convention and ratification by the necessary number of States might render the convention itself nugatory. He drew attention to paragraph 63 of the International Law Commission's introduction[3] to the draft articles which stated *inter alia* that, if the majority of States became parties to the convention within a reasonable period of time, the establishment of a convention would have proved worth while. The converse, he felt, was also true.

4. Mr. PIRIS (France) recalled, in connection with the argument advanced by the representative of Brazil, that the United Nations Convention on the Law of the Sea 1982, required 60 ratifications for its entry into force precisely because it was generally regarded as a very important instrument. It was also necessary to bear in mind the fact that earlier international conventions, such as the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations had been concluded at a time when the membership of the United Nations had been much smaller. It was essential that a convention whose aim was to develop international law should enjoy the support of the greatest possible number of States. The proposed requirement of 15 ratifications would represent a mere 10 per cent of the total membership of the organization, not to count other countries, including Switzerland and the People's Democratic Republic of Korea, which were not Members of the United Nations but were participating in the Conference. His delegation was therefore in favour of the amendment proposed by the representative of the Netherlands.

5. Mr. HAWAS (Egypt) said that it might be best to postpone further consideration of article D, which evidently dealt with a point on which there was some disagreement.

6. Mr. BINTOU'A-TSHIABOLA (Zaire) said that the question of the number of ratifications to be required was an important one and agreed with the previous speaker that it would be better to postpone taking a decision on it.

7. The PRESIDENT said that, if she heard no objections, she would assume that the Conference wished to defer further consideration of article D.

It was so decided.

Article E (Authentic texts)

The text and title of article E were adopted without a vote.

8. Mrs. de MARGERIE (France) said that it would be preferable if the French text used the words *"font également foi"*, and expression which had been employed in a number of conventions and which would in no way alter the meaning of the article as adopted.

9. The PRESIDENT said that, if she heard no objections, she would assume that the Conference accepted the revision proposed by France.

It was so decided.

The meeting rose at 3.40 p.m.

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[1] Subsequently issued under the symbol A/CONF.117/L.4.

[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

[3] *Yearbook of the International Law Commission, 1981*, vol. II (Part Two) (United Nations publication, Sales No. E.82.V.4 (Part II)), p. 16.

9th plenary meeting

Thursday, 7 April 1983, at 11.15 a.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 *(continued)*

[Agenda item 11]

REPORTS OF THE DRAFTING COMMITTEE *(continued)* (A/CONF.117/10 and Add.1-3)

REPORT OF THE COMMITTEE OF THE WHOLE *(continued)* (A/CONF.117/11 and Add.1-12)

1. The PRESIDENT said that efforts which had been made by delegations with a view to reaching a compromise on certain draft articles had unfortunately proved unsuccessful. He expressed his gratitude to all those who had made commendable efforts in that direction.

2. He drew the attention of the Conference to the urgency of completing the consideration of the articles of the draft convention in time to enable the secretariat to produce the final text for the following day. In view of the time factor, he suggested that, until the draft convention as a whole was before the Conference for adoption, representatives should refrain from explaining their votes or their positions on individual articles. He proposed to allow such explanations only in the rare cases where a delegation had changed its opinion and voted otherwise than it had done in the Committee of the Whole. In the absence of objection, he would take it that the Conference decided to adopt that procedural suggestion.

It was so decided.

Article D (Entry into force) *(concluded)*

3. The PRESIDENT put to the vote the amendment to article D submitted by the Netherlands (A/CONF.117/L.4).

The Netherlands amendment to article D (A/CONF.117/L.4) was rejected by 46 votes to 20, with 3 abstentions.

The title and text of article D were adopted by 54 votes to none, with 16 abstentions.

4. Mr. DALTON (United States of America), speaking in explanation of vote, said that his delegation would have preferred the formula proposed in the Netherlands amendment. Nevertheless, it had voted in favour of article D as submitted by the Drafting Committee because, with the requirement of only 15 ratifications or accessions, the proposed convention would enter into force earlier and could then be applied by those parties which had ratified it or acceded to it. However, the fact of such a convention being in force for only 15 parties would not confer upon the rules embodied in it a sufficient degree of authority for them to be acknowledged as valid otherwise than strictly between the parties which had subscribed to the instrument.

Article 13 (Transfer of part of the territory of a State)

5. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introducing article 13, said that in the Spanish version it had been thought more appropriate to use in the title the word "*Transferencia*" and in the text of paragraph 1 "*transferida*" rather than, respectively, "*Traspaso*" and "*traspasada*".

6. In the French version, to align the text of paragraph 2 with the other language versions, the introductory phrase "*En l'absence d'un accord*" had been changed to read "*En l'absence d'un tel accord*".

7. Those changes were also reflected in the Spanish and French versions of later articles but he would refrain from drawing attention to them in the case of each article concerned.

8. Mr. BEN SOLTANE (Tunisia) pointed out that in the French versions of articles 25 and 35 the word "*tel*" already appeared before the word "*accord*".

9. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the word "*tel*" had been introduced by the Drafting Committee into the French version of paragraph 2, among other reasons, precisely in order to align article 13 with articles 25 and 35.

The title and text of article 13 were adopted by 53 votes to none, with 16 abstentions.

Article 14 (Newly independent State)

10. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that article 14 remained as adopted by the Committee of the Whole, apart from the change consequent upon the drafting change made in the definition in article 8, to which he had already drawn attention.

11. Mr. MAAS GEESTERANUS (Netherlands) requested a separate vote on paragraph 4 of article 14. At the 13th meeting of the Committee of the Whole, his delegation had made a proposal designed to improve the text of that paragraph, but that proposal had not been adopted by the Committee. His delegation would vote against paragraph 4; if the paragraph was adopted by the Conference, it would regretfully vote against article 14 as a whole.

12. The PRESIDENT noted that there was no objection to the proposal that paragraph 4 be voted on separately. He accordingly invited the Conference to vote on that paragraph.

The paragraph was adopted by 49 votes to 21, with 1 abstention.

The title and text of article 14 as a whole were adopted by 52 votes to 21.

Article 15 (Uniting of States)

13. The PRESIDENT observed that article 15 (A/CONF.117/10/Add.1) had been approved by the

Committee of the Whole after the Drafting Committee had reported on it.

The title and text of article 15 were adopted.

Article 16 (Separation of part or parts of the territory of a State)

14. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Drafting Committee had drawn inspiration from the text of article 15 which referred to "two or more States" uniting and forming one successor State and had decided to replace the phrase "and form a State" in the introductory part of paragraph 1 of article 16 by the phrase "and form a successor State".

The title and text of article 16 were adopted by 58 votes to none, with 15 abstentions.

Article 17 (Dissolution of a State)

15. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that in paragraph 1 of article 17, by analogy with paragraph 1 of article 16, the words "two or more States" had been replaced by the words "two or more successor States". In addition, it had been considered desirable to follow the example of previous articles and to refer to a State as being a predecessor State prior to the succession of States. That seemed particularly appropriate in the case of a State which subsequently ceased to exist. The word "predecessor" in the first line of paragraph 1 had therefore been deleted and the expression "its territory" had been altered to read "the territory of the predecessor State".

16. Mr. NATHAN (Israel) asked whether, in order to facilitate interpretation, the word "predecessor" should not be retained in the first line of paragraph 1, since otherwise there appeared to be a certain lack of coherence between that line and the remainder of the paragraph. He further asked whether the commas in subparagraph 1(*d*) were not superfluous. They had not appeared in the International Law Commission's text.

17. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that after discussion, the Drafting Committee had taken the view that the opening of paragraph 1 was clearer in its revised form. There was no doubt as to the fact of the State having been a predecessor State after it had ceased to exist. The punctuation in subparagraph 1(*d*) had been adopted in order to harmonize with the text of other paragraphs.

18. Mr. YÉPEZ (Venezuela) asked whether, in the Spanish version, the end of subparagraph 1(*c*) should not read "*de que se trate*".

19. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, concurred.

The title and text of article 17 were adopted.

20. Mr. ECONOMIDES (Greece) said that, if there had been a vote on the article, his delegation would have abstained.

Article 25 (Transfer of part of the territory of a State)

21. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that in the Spanish text, the formula used in paragraph 3 "*los medios de prueba más fehacientes disponibles en sus archivos de Estado que guarden relación con títulos territoriales concernientes al*" had been replaced by the formula "*la mejor prueba disponible en sus archivos de Estado que guarde relación con títulos territoriales del*", which corresponded more closely to the English and French versions. That new formula had been used, where appropriate, throughout the Spanish version of the draft articles.

The title and text of article 25 were adopted by 61 votes to 1, with 11 abstentions.

Article 26 (Newly independent State)

22. Mr. MAAS GEESTERANUS (Netherlands) requested a separate vote on paragraph 7 of article 25 for the reasons which he had explained in the Committee of the Whole at its 29th meeting.

23. Mr. KOLOMA (Mozambique) objected to that request under rule 39 of the rules of procedure.

The request for a separate vote was rejected by 41 votes to 21, with 6 abstentions.

The title and text of article 26 were adopted by 53 votes to 21, with 1 abstention.

Article 27 (Uniting of States)

The title and text of article 27 were adopted

Article 28 (Separation of part or parts of the territory of a State)

24. Mr. THIAM (Senegal) said that the Committee of the Whole had drawn the Drafting Committee's attention to the need to indicate clearly what was meant by "State archives", particularly in the context of article 23 and article 28, paragraph 4. He wondered why only article 23 had been amended.

25. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, observed that article 23 referred to the archives of a third State and not to the state archives of the predecessor State. The Committee had therefore decided to delete the word "State" in that context, in order to avoid confusion with the "State archives of the predecessor State", the formula used elsewhere.

26. Mr. THIAM (Senegal) said that, in his view, paragraph 4 referred to the State archives of the successor State, which had not yet been defined.

27. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the meaning of paragraph 4, as drafted, had been quite clear to the Drafting Committee. He therefore suggested that it might facilitate the work of the Conference if the representative of Senegal were to discuss the matter in greater detail with a member of the Drafting Committee outside the meeting.

The title and text of article 28 were adopted by 54 votes to 20, with 1 abstention.

Article 29 (Dissolution of a State)

28. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, pointed out that the changes made in article 17, to which he had drawn attention, also applied to article 29.

The title and text of article 29 were adopted by 54 votes to 21.

Article 31 (State debt)

29. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, reminded the Conference of his earlier observations concerning the changes made in article 31.

The title and text of article 31 were adopted by 53 votes to 5, with 18 abstentions.

30. Mr. ZSCHIEDRICH (German Democratic Republic) said that his delegation had voted in favour of article 31 on the understanding, which it had already expressed in the Committee of the Whole at its 31st meeting, that one of its purposes was to exclude odious debts, since they were not in conformity with international law.

31. The PRESIDENT observed that it had earlier been agreed that representatives would not at the present stage repeat comments which they had made in the Committee of the Whole.

Article 35 (Transfer of part of the territory of a State)

32. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Drafting Committee had considered it desirable to replace the expression "*inter alia*" in paragraph 2 of the English version by "in particular", in order to achieve closer correspondence with the expressions "*notamment*" in the French text and "*en particular*" in the Spanish text. The same change had been made in articles 38 and 39. Furthermore, the word "such" had been inserted at the beginning of paragraph 2 in order to ensure harmony with other articles.

The title and text of article 35 were adopted by 73 votes to none.

Article 36 (Newly independent State)

33. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, pointed out that in paragraph 1 the Drafting Committee had shortened the text by replacing the phrase "between the newly independent State and the predecessor State" by the phrase "between them".

The title and text of article 36 were adopted by 55 votes to 21, with 1 abstention.

Article 37 (Uniting of States)

34. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that, as in the case of articles 15 and 27 adopted by the Committee of the Whole, the Drafting Committee proposed that, in the English version, the words "a successor State" should be replaced by the words "one successor State".

The title and text of article 37 were adopted.

Article 38 (Separation of part or parts of the territory of a State)

The title and text of article 38 were adopted by 71 votes to none, with 1 abstention.

Article 39 (Dissolution of a State)

35. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the changes made in article 17 to which he had drawn attention, also applied to article 39.

The title and text of article 39 were adopted by 74 votes to none.

ARTICLES A TO E AND ANNEX (Settlement of disputes)

36. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introducing the second report of the Drafting Committee to the Conference (A/CONF.117/10/Add.2), said that, after careful consideration, the Drafting Committee had decided not to make any changes in the titles and texts of articles A to E and the Annex on settlement of disputes, as referred to it by the Committee of the Whole.

37. In the course of its consideration of article C, the Drafting Committee had agreed that it was understood that, if the parties to a dispute opted for the arbitration alternative, the procedures intended to set the arbitration in motion would have to be defined by agreement between the parties to the dispute themselves.

38. Basing itself on the 1978 Vienna Convention on Succession of States in Respect of Treaties,[1] the Drafting Committee proposed that articles A to E be incorporated in a separate part of the convention preceding the part on final provisions, as Part V of the convention, it being understood that the Annex would be placed at the very end of the convention.

Article A (Consultation and negotiation)

39. The PRESIDENT said that, if there was no objection, he would take it that the Conference agreed to adopt article A without a vote.

40. Mr. MAAS GEESTERANUS (Netherlands) requested a vote on article A.

The title and text of article A were adopted by 66 votes to none, with 8 abstentions.

Article B (Conciliation)

The title and text of article B were adopted.

41. Mr. MONNIER (Switzerland) said that, if article B had been put to the vote, his delegation would have abstained, because that article referred to the Annex, which was the subject of an amendment submitted by Austria and Switzerland (A/CONF.117/L.2).

Article C (Judicial settlement and arbitration)

The title and text of article C were adopted.

Article D (Settlement by common consent)

The title and text of article D were adopted.

Article E (Other provisions in force for the settlement of disputes)

The title and text of article E were adopted.

42. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation had not insisted on a vote on articles B to E; it wished, however, to place on record its

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

view that the system for the settlement of disputes provided for in the draft convention was inadequate and should not be cited by any future conference as the result of a compromise at the present Conference.

43. Mr. SKIBSTED (Denmark) associated himself with the remarks of the representative of the Netherlands.

Annex (Settlement of disputes)

44. Mr. MONNIER (Switzerland), introducing, on behalf of his own delegation and that of Austria, the amendment submitted in document A/CONF.117/L.2, said that the alternative text proposed for the Annex on conciliation should be regarded, not as a compromise text, but simply as an effort to introduce certain modest improvements into the conciliation procedure, which unfortunately remained the only means available under the draft convention for the settlement of disputes.

45. In drafting the amendment, the sponsors had drawn inspiration from the 1978 Vienna Convention, and also from certain procedures provided for in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character[2] and in the 1982 United Nations Convention on the Law of the Sea.[3]

46. He wished to emphasize that the proposals did not affect the nature of the conciliation procedure, nor the task of the proposed conciliation commission, which was to facilitate agreement by the parties themselves. The few changes introduced were generally aimed at urging parties to comply with the conciliation commission's recommendations, with a view to bringing the dispute to an end.

47. Referring to the specific changes proposed, he said that, in paragraph 2, the time-limit for the appointment of the conciliators and the chairman had been reduced from two months to one month. The sponsors had felt that the time-limit set in the 1978 Convention could lead to undue delays. Otherwise, paragraphs 1 to 5 were the same as the corresponding annex in that Convention.

48. Paragraph 6 was based mainly on the provisions of the 1975 Convention; the penultimate sentence, in particular, was a verbatim quotation from article 85, paragraph 7, of that Convention. The last sentence of that paragraph was new. His own delegation's position in that connection was that the possible agreement of the parties to abide by the recommendations in the Commission's report did not give those recommendations a quasi-judicial status; legally, they remained recommendations. It should also be emphasized that the possibility of such agreement was merely an option.

49. Paragraph 7, which was also a new provision, was self-explanatory.

50. In paragraph 8, the time-limit of three months could be adjusted either way. He pointed out that the publication of the reports of conciliation commissions was not a new idea: the 1982 United Nations Convention on the Law of the Sea,[3] in particular, provided for the automatic publication of the report of the Conciliation Commission under certain conditions.

51. He reiterated that the changes proposed in the amendment did not alter the nature of the conciliation procedure and were designed simply to facilitate its application.

52. Mr. TÜRK (Austria) said that his delegation wished to add a few observations to the statement just made by the representative of Switzerland in his introduction of document A/CONF.117/L.2.

53. Although the system of compulsory conciliation proposed by Kenya and Mozambique had not been the solution his delegation would have preferred, it had nonetheless voted in favour of that proposal in the Committee of the Whole since it appeared at the time to be the only widely acceptable system for the settlement of disputes. Nevertheless, it could and should be possible to improve upon that system without affecting its general acceptability; it was that concern that had prompted the submission of document A/CONF.117/L.2.

54. The question might be raised as to why the disputes settlement system in the present draft convention should be different from that set forth in the 1978 Convention. The 1978 Convention ruled on and thus formed part of the law of treaties. The present draft convention, on the other hand, was concerned with the distribution of goods and wealth in the form of property, archives and debts; it thus placed far greater emphasis on equity—a term which required appropriate procedures for the adaptation of general rules to specific cases. The amendments submitted, minor as they were, made the draft more responsive to those concerns.

55. Moreover the changes introduced did not place States under any additional obligations to abide by the recommendations of the conciliation commission; they rather opened up the possibility of providing for a binding recommendation. There was no reason, in his delegation's view, to forego such an option, which in any event did not represent an innovation in international law.

56. The amendment also required a party to a dispute which was not in a position to comply with the recommendation to justify its position. A State could, for various reasons, be obliged not to comply with the recommendations of the conciliation commission: in such a situation, it would be helpful to establish a channel of communication between the parties concerned, on the basis of which a final settlement of the dispute which was acceptable to both parties and met the requirements of the rule of law, was more likely to emerge. The obligation to make known the reasons for non-compliance would thus contribute to a mutual understanding of the needs and interests of the States involved in a dispute, in the interests of overall co-operation among States and the development of friendly relations between them.

57. Mr. TEPAVITCHAROV (Bulgaria), speaking on a point of order, said that his delegation viewed the Annex as an integral part of the section on the set-

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[2] *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II (United Nations publication, Sales No. E.75.V.12), document A/CONF.67/16.

[3] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII, document A/CONF.62/122.

tlement of disputes, which had already been adopted by the Conference. If the Conference wished to reconsider that matter, it would, under rule 31 of the rules of procedure, have to decide to do so by a two-thirds majority of the representatives present and voting.

58. The PRESIDENT said that the Bulgarian representative's point of order would be dealt with at the beginning of the next meeting.

The meeting rose at 1.15 p.m.

10th plenary meeting

Thursday, 7 April 1983, at 2.45 p.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*concluded*)

[Agenda item 11]

REPORTS OF THE DRAFTING COMMITTEE (*concluded*) (A/CONF.117/10 and Add.1-3)

REPORT OF THE COMMITTEE OF THE WHOLE (*concluded*) (A/CONF.117/11 and Add.1-12)

Annex (Settlement of disputes) (*concluded*)

1. The PRESIDENT invited the Conference to resume its consideration of the text of the Annex proposed by the Drafting Committee (A/CONF.117/10/Add.2) and of the amendment proposed by Austria and Switzerland (A/CONF.117/L.2).

2. Mr. TEPAVITCHAROV (Bulgaria) recalled that, in raising a point of order at the end of the previous meeting, he had objected that the amendment proposed by Austria and Switzerland involved reconsideration of provisions which had already been adopted by the Committee of the Whole. In order to have a discussion on the amendment therefore the Conference must take a decision under rule 31 of the rules of procedure which, as was made clear by rule 50, was intended to apply to all decisions of committees, subcommittees and working groups. If such a decision was taken by the required two-thirds majority, his delegation would not oppose it.

3. Mr. MONNIER (Switzerland) pointed out that, although rule 31 applied to committees, thus including the Committee of the Whole, the plenary Conference was a quite different and autonomous forum which was entitled to consider any proposed amendment presented in any form. He could not accept that a decision under rule 31 was called for in the particular case; the amendment in A/CONF.117/L.2 had been submitted in the proper way, fully in accordance with the rules of procedure, and at the earliest possible moment, namely, as soon as the Drafting Committee's text (A/CONF.117/10/Add.2), the basic proposal on the question for the purposes of the plenary Conference, had been circulated. It was only right and proper that the Conference should have the opportunity to debate the proposed amendment.

4. After a brief procedural discussion, in which the PRESIDENT, Mr. Tepavitcharov (Bulgaria), Mr. ROSENSTOCK (United States of America) and Mr. MONCEF BENOUNICHE (Algeria) took part, the PRESIDENT ruled that the submission of the amendment in question by Austria and Switzerland did not call for the reconsideration of a proposal on which a decision had already been taken and that the Conference could thus consider the amendment.

5. Mr. MONCEF BENOUNICHE (Algeria) said that for the most part the amendment proposed by Austria and Switzerland did not pose any particular problems, with the exception of the penultimate sentence of paragraph 6, which stated that any party to the dispute might unilaterally declare that it would abide by the recommendations in the report of the conciliation commission. It was not clear whether that declaration was to be made before or after the report had been drawn up. That was an important point, since the possibility of making such a declaration after the preparation of the report by the conciliation commission might promote agreement among the parties, which was, after all, the purpose of conciliation.

6. Paragraph 8 of the amendment, under which publication of the conciliation commission's report could be requested unilaterally by one of the parties to the dispute, seemed to conflict with that purpose. He doubted whether such a one-sided arrangement would facilitate the preparation of acceptable terms for a settlement. It would be more desirable to maintain a balance between the parties and to permit action to be taken only at their joint request.

7. The PRESIDENT invited the Conference to vote on the amendment proposed by Austria and Switzerland (A/CONF.117/L.2).

The amendment was rejected by 40 votes to 22, with 8 abstentions.

8. The PRESIDENT invited the Conference to vote on the text of the Annex proposed by the Drafting Committee (A/CONF.117/10/Add.2).

The Annex was adopted by 56 votes to none, with 15 abstentions.

9. Mr. HAYASHI (Japan), speaking in explanation of vote, said his delegation had voted in favour of the Annex proposed by the Drafting Committee although it had abstained in the vote on the same proposal in the Committee of the Whole. Although the Annex was not entirely satisfactory, it was better to include it than to omit provisions on the settlement of disputes entirely.

Placement of the provisions on settlement of disputes

10. The PRESIDENT said that, unless he heard any objections, he would take it that the Conference agreed that, as recommended by the Chairman of the Drafting Committee, articles A to E on settlement of disputes should constitute Part V of the convention, the Annex being appended at the very end of the convention.

It was so decided.

Placement of the final provisions

11. The PRESIDENT said that, unless he heard any objections, he would take it that the Conference agreed with the recommendation of the Drafting Committee that articles A to E containing the final provisions of the future convention (A/CONF.117/10) should form a separate Part VI to be placed at the end of the convention.

It was so decided.

Titles of Parts I, II, III, IV, V and VI of the Convention

12. The PRESIDENT invited the Conference to take a decision on the titles of the Parts of the convention as proposed by the Drafting Committee.

Part I

The title "General provisions" was adopted.

Part II

The title "State property" was adopted.

Part III

The title "State archives" was adopted.

Part IV

The title "State debts" was adopted.

Part V

The title "Settlement of disputes" was adopted.

Part VI

The title "Final provisions" was adoptd.

Titles of sections 1 and 2 of Parts II, III and IV

13. The PRESIDENT invited the Conference to take a decision on the titles of the sections of Parts II, III and IV, as recommended by the Drafting Committee.

Section 1

The title "Introduction" was adopted.

Section 2

The title "Provisions concerning specific categories of succession of States" was adopted without a vote.

Title of the Convention

14. The PRESIDENT invited the Conference to take a decision on the title of the convention as proposed by the Drafting Committee.

The title "Vienna Convention on Succession of States in Respect of State Property, Archives and Debts" was adopted.

Final numbering of articles

15. The PRESIDENT noted that the articles provisionally designated by letters or bearing the indication *bis* would, in the final text of the convention, receive numbers corresponding to their placement therein.

The Conference took note of the President's statement.

Preamble of the Convention

16. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introducing the text of the preamble as adopted by that Committee (A/CONF.117/10/Add.3) pursuant to the decision taken at the 12th meeting of the Committee of the Whole, noted that the text had been adopted on the basis of the draft submitted to it by a working group set up for the purpose. For the most part, it reproduced the preamble to the 1978 Vienna Convention on Succession of States in respect of Treaties, with the necessary adaptations, except for the last paragraph, which repeated the text of the corresponding paragraph of the preamble to the United Nations Convention on the Law of the Sea.

17. He noted that, at the beginning of the tenth paragraph, the words "this Convention" should be amended to read "the present Convention".

The preamble of the Convention was adopted.

18. Mr. PIRIS (France) said that his delegation had not objected to the adoption of the preamble without a vote. However, had a vote been taken, his delegation would have abstained because the enumeration of the principles of international law in the seventh paragraph deviated from the wording of the Charter of the United Nations on certain significant points.

Adoption of a convention and other instruments deemed appropriate and of the Final Act of the Conference

[Agenda item 12]

ADOPTION OF THE CONVENTION

19. The PRESIDENT said that a number of delegations wished to make statements in explanation of vote before the vote on the draft convention as a whole.

20. Mr. ROSENSTOCK (United States of America) recalled that his delegation had voted against a number of articles of the draft convention and had abstained in the votes on certain others. He regretted that none of the articles which his delegation had found most unacceptable had been ameliorated. The fact that the most objectionable material was in fact irrelevant to the issue of succession of States made the inclusion of that material all the more disturbing. That remark applied particularly to the provisions of articles 14, 26, 28, 29 and 36.

21. The process of codification and progressive development of international law was difficult enough even when confined to relevant material. To treat the drafting of a convention as an opportunity to impose minority theories of no immediate relevance was a blow to the heart of the entire process. In that connection his delegation would like to express its gratitude to the delegation of Brazil for its efforts to assist the Conference to steer a middle course by including all that

was relevant and avoiding extreme treatment of that which was not.

22. Other aspects of the text causing his delegation serious problems related mostly to the extent and scale of the special treatment given to newly independent States and the unnecessary vagueness of the formulation of a number of provisions. The latter defect might have been cured or at least significantly corrected by including binding dispute settlement provisions. However, the same delegations which had insisted on the adoption of the formulations in question had refused to accept a binding procedure for the settlement of disputes.

23. In short, his delegation's position was that the draft convention contained much that was neither existing law nor acceptable as a formulation *de lege ferenda*. For those reasons his delegation intended to vote against the draft convention as a whole. In so doing, his country would be casting its first negative vote on a draft convention of such a nature. His delegation regretted that the inclusion of irrelevant material and the absence of a sufficiently widespread spirit of compromise had left it with no alternative.

24. His delegation hoped that, in the future, work of the same character would take sufficient account of the views of the international community as a whole, so that its vote on the present occasion would remain a unique experience.

25. Mr. OESTERHELT (Federal Republic of Germany), speaking on behalf of the ten States members of the European Communities, said that the delegations of those countries had actively participated in the debate and had contributed their share to the common endeavour to formulate generally acceptable texts. It was with great regret that, at the end of the work of the Conference, the ten countries members of the European Communities had to recognize that their contribution had not led to any significant changes in the parts of the convention which were of particular interest to them and that, on balance, the text of the convention was not acceptable to them as a whole, owing to its many deficiencies and even though some parts of it were not objectionable.

26. Those ten delegations would have greatly preferred that compromises could have been found that would have made it possible for them to vote in favour of the draft convention. As the text stood however they were not in a position to support it as a whole and would not vote in favour of its adoption.

27. Lastly, he wished to express their disappointment regarding the manner in which the Conference had carried out its work. A conference like the present one, which attempted to formulate existing rules of customary international law and to reach agreement about rules of contractual international law, had two very important tasks, neither of which could be fulfilled if it did not take into consideration the views of a substantial minority of States. If the way in which the Conference had proceeded were to set an example for future codification conferences, then the codification process as such might well suffer damage. The ten delegations wished to sound a warning against such a development.

28. He proceeded to state his own delegation's reasons for voting against the adoption of the convention as a whole. Those reasons were connected above all with the provisions in article 14, paragraph 4; article 36, paragraph 2; and article 26, paragraph 7. The legal content of those provisions was not clear. His delegation categorically rejected any allegation to the effect that any of the principles contained in those provisions was part of *jus cogens* in international law. He stressed that there was no unwillingness on his delegation's part to discuss the substance of those principles, or to negotiate on formulations that could give expression to the basic precepts underlying them. He emphasized however that, in his delegation's view, the questions dealt with in those provisions did not belong in a convention on State succession in respect of State property, archives and debts.

29. Another reason for his delegation's negative vote related to the multitude of rather vague terms used throughout the text of the convention and the absence of an adequate procedure for the settlement of disputes between the parties to the convention. His delegation did not wish to contribute to the adoption of a text which it feared might ultimately lead to protracted controversies about the interpretation and application of its rules without any provision enabling a third party —court or arbitral tribunal—to settle finally, and in a binding manner, disputes arising between parties.

30. Mr. MONCEF BENOUNICHE (Algeria) requested that a roll-call vote should be taken on the draft convention. His delegation would vote in favour of the draft.

31. It was a regrettable feature of the Conference that not all delegations had been responsive to the positive approach adopted by the Group of 77 and a number of other countries which had endeavoured to facilitate the work of the Conference. Those delegations which had chosen to obstruct the Conference and which were prepared to vote against the draft convention bore a heavy responsibility. Their negative attitudes to an instrument which was fully in conformity with trends in the international community paralleled the uncooperative approach which had led to difficulties in the negotiations on the new international economic order. Nevertheless the work of codification and progressive development of international law would continue and nothing could jeopardize the legal importance and value of the convention.

32. Mr. KIRSCH (Canada) said that Canada had a long-standing tradition of contributing to the progressive development of international law. His delegation however did not consider that the convention before the Conference represented a positive contribution to that development, for a number of reasons. First, some provisions, in particular articles 14, paragraph 4; 26, paragraph 7; 28, paragraph 3; 29, paragraph 4; and 36, paragraph 2, contained references to concepts, in the form of conditions surrounding the conclusion of agreements, that had no generally accepted meaning in international law. His delegation had been prepared to accept references to such concepts as general principles aimed at fostering the national development of States. It could not, however, accept any suggestion that they

were part of *jus cogens* in international law. References to those principles should not have been included in their present form in an instrument that purported to codify the rights and obligations of States. Secondly, numerous provisions in the convention lent themselves to differing interpretations and were unlikely to be of assistance to either predecessor or successor States facing the actual problems of succession. He referred to a number of statements made by his delegation in the Committee of the Whole. The general difficulty of interpretation was compounded by the absence in the convention of satisfactory provisions relating to the settlement of disputes by a compulsory third party procedure. In his delegation's view, the combination of unclear legal concepts, unclear drafting and unsatisfactory dispute settlement provisions would make the convention a factor of legal insecurity rather than of security in relations between predecessor and succcessor States.

33. Thirdly, it had been clear since the beginning of the Conference that the document which had served as a basis for its work had been a source of dissatisfaction to a number of delegations. The Conference could and should have attempted to improve the contents and drafting of the text and to ensure that the final document reflected general agreement among the participating States. His delegation had been prepared to make the necessary compromises to achieve such a result.

34. Individual efforts, much appreciated by his delegation, had been made to seek consensus solutions but they had remained the exception. The convention which ought to have embodied universally applicable rules had been treated as though it was a political statement aimed at reflecting the views of a particular group of States. All amendments or proposals that had not fully met the wishes of the majority of States, or merely had had the defect of being submitted by the minority, had been systematically rejected after a cursory examination.

35. His delegation deplored the Conference's working methods, in particular premature and inconsiderate resort to voting without regard to the likely consequences for the outcome of its work. Such methods were ill-adapted to a modern codification exercise and had not served the development of international law in general or the interest of the Conference in particular. It was to be hoped that future codification conferences would not follow the unfortunate example set at the present Conference.

36. The value of a treaty that did not codify customary or general international law but purported to create new rules, as was unquestionably the case with the new convention, depended entirely upon the degree of support that it was able to command, particularly among States with different interests in the subject matter of the treaty. In the absence of that support, the contribution of such a treaty was likely to remain purely theoretical.

37. For the reasons he had given, the Canadian delegation would, with regret, vote against the adoption of the convention.

38. Mr. SHASH (Egypt) said that his delegation would vote in favour of the draft convention. He expressed his delegation's gratitude to the International Law Commission for its valuable contribution in the form of the draft articles submitted to the Conference, and also for the commentary, which his delegation had read with great interest.

39. It was a matter of deep regret that some delegations opposed the draft articles on the grounds that the Conference had been endeavouring to arrive at a text which would favour a specific group of countries at the expense of the international community as a whole. Nothing could be further from the truth: the Group of 77 had been prepared to make concessions in order to improve the text, particularly in the case of articles 4, 6, 16, 19, 20, 32 and 34. Such concessions proved that the Group of 77 had indeed been acting in good faith. Consultations had been held, but some delegations had categorically rejected certain principles which enjoyed a large measure of support at the Conference, including such universally recognized principles as the sovereignty of every people over its wealth and natural resources, or the right of peoples to development.

40. The Conference had succeeded, despite obstructions, in arriving at a convention which would reflect international practice and which had a solid legal basis.

41. The achievement of generally acceptable rules of international law required a large measure of flexibility on the part of the individual members of the international community. He hoped that delegations which had decided to vote against the draft convention would reconsider their position and join with the majority in pursuing the goals of codification and progressive development of international law.

42. Mr. SQUILLANTE (Italy) said that, for numerous reasons related both to form and to substance, his delegation would vote against the convention as a whole. First, however, he wished to stress that at the outset the attitude of the Italian Government had been both positive and encouraging, as could be seen from document A/CN.4/338/Add.1 of April 1981. Nevertheless the hopes which it had entertained at that juncture had been frustrated by the manner in which the Conference had been conducted. Sound legal proposals by the group to which Italy belonged had been systematically rejected by the majority. The codification and progressive development of international law might be jeopardized if that kind of procedure continued. A draft of the scope and importance of the convention should not be adopted without at least some attempt to accommodate the viewpoints of the minority.

43. With regard to the substance, his delegation had had occasion to make known its views on specific articles during the discussion in the Committee of the Whole. Nevertheless he wished to reaffirm the difficulties which his delegation had with clauses which not only restricted the freedom of States parties to conclude bilateral agreements on matters dealt with in the convention but also were likely to affect the rights and interests of third States that were not parties to the convention. Furthermore, the text contained provisions which were legally vague and imprecise. He cited, for example, the concept of "equitable proportions" which appeared in articles 17, 35, 38 and 39 and others such as "normal administration", "connected with the

activity" and "in respect of the territory". Furthermore, clauses had been inserted which were clearly of a political and not of a legal nature.

44. It would therefore have been all the more desirable to establish appropriate and effective machinery for the settlement of disputes which might arise and hence to approve rules for something more than a mere conciliation procedure. But the text finally adopted on that subject was too weak and would not make the effective contribution desired. It was in fact identical with that of articles 41 to 45 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties.[1] A more refined system for settling disputes concerning the interpretation and application of the convention should have been devised: recourse to the procedure for the settlement of disputes should have been made obligatory and it should have been provided that the relevant decisions should be taken by an independent adjudicating body.

45. In conclusion he stated that, in his delegation's opinion, the convention was inconsistent with State practice and did not represent a codification of the existing general international law on the subject. His delegation hoped that in future the international community would once again demonstrate its cohesive force and formulate texts which, founded on the solid bases of law, practice, theory and jurisprudence, would be universally approved.

46. Mr. GÜNEY (Turkey) said that his delegation would vote in favour of the convention as a whole and that it was grateful to the International Law Commission for having provided a text which enabled the Conference to arrive at the draft currently before it. Unfortunately, the juridical scope of article 14, paragraph 4; of article 26, paragraph 7; and of article 36, paragraph 2, had given rise to controversy in the Committee of the Whole owing to their lack of clarity. His delegation was anxious to avoid any future misunderstanding concerning the interpretation or application of those provisions: in his delegation's view, there could be no question that they could constitute a general rule of international law to be applied automatically and independently of the convention as a whole.

47. Mr. SUÁREZ de PUGA (Spain) said that his delegation would regretfully abstain in the vote on the convention as a whole.

48. Spain had played an active part in the process of codification of international law under the auspices of the United Nations and was a party to most of the conventions which had been born of that process. For that reason, it had participated in the Conference with a lively interest. It had been specially concerned that the text produced should achieve the highest possible degree of technical perfection and, above all, that a spirit of compromise and the greatest possible harmony should prevail among the States represented.

49. It was from that motive that his delegation had supported the adoption of rules for dispute settlement broad enough to settle any disputes which might arise from the imprecise nature of certain expressions used in the convention to define the criteria determining the relationship between certain property, archives and debts and the States involved in a succession. It was also for that reason that his delegation had supported the efforts to find a compromise solution to the problems which the provisions of articles 14, paragraph 4; 26, paragraph 7; 28, paragraph 3; 29, paragraph 4; and 36, paragraph 2, posed for certain delegations. Those provisions departed from or in some cases conflicted with current State practice. They were based on the premise that certain rights were part of *jus cogens*, a view which had not been generally accepted by the international community. That fact made consensus among States doubly necessary in the adoption of such provisions and his delegation believed that most delegations had not shown sufficient readiness to compromise.

50. Thus his delegation's abstention reflected, first, its reservations regarding certain technical aspects of the text and, second and more significantly, its doubts whether the codification of international law under the auspices of the United Nations would be able to proceed with any chance of success if the spirit of compromise and understanding which had been present in other earlier undertakings of the same kind was not restored. His delegation had done all that it could to promote acceptable compromises which would reconcile divergent views but felt that it had not received sufficient support for its endeavours from other delegations.

51. Mr. KADIRI (Morocco) said that his delegation would vote in favour of the draft convention which it regarded as a decisive step forward in the codification and progressive development of international law, particularly in view of the complexity of the subject-matter covered by the articles. The Conference had been especially valuable in that it had succeeded in codifying such important rules of international conduct as good faith. Although some principles had been opposed by certain delegations on the grounds of their supposed ambiguity, in his delegation's view it was important to realize that the process of progressive development of international law was a continuing one and that the implications of such principles as equity would become clearer with the passage of time. In conclusion, he said that the convention was particularly significant from the standpoint of codification in that it had established legal guarantees in the settlement of disputes.

52. Mr. MARCHAHA (Syrian Arab Republic) said that his delegation would vote in favour of the draft convention and that it agreed with the views expressed by the representatives of Algeria and Morocco.

53. He felt it important to point out that the International Law Commission was a body composed of eminent international jurists who represented the world's principal legal systems. It could not be regarded as representing only the Group of 77. His delegation had come to the Conference prepared to discuss a draft which had been formulated over a long period of time and on which, it had assumed, there was some measure of preliminary agreement. From the outset, however, it had been surprised to note that some delegations did

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

not share that constructive approach. In many cases the objections raised to the draft articles seemed to be based on an unrealistic expectation that the convention should serve the interests of certain countries exclusively and not those of the international community as a whole. As the representative of Egypt had pointed out, the members of the Group of 77 had shown willingness to compromise in the endeavour to arrive at a balanced draft and there could be no justification in the claim that they had inflexibly pursued their own interests. It was clear that the delegations which opposed the text did not wish to march with progress. His delegation would vote in favour of the draft convention notwithstanding all the concessions made by the Group of 77.

54. Mr. ŠAHOVIĆ (Yugoslavia) said that his delegation would vote in favour of the draft convention as a whole and welcomed the fact that the Conference had fulfilled its mandate under the terms of General Assembly resolution 37/11 of 15 November 1982. His delegation considered that all delegations were to be congratulated on the results of the Conference notwithstanding the differences which had arisen.

55. The draft convention expressed the intentions of the international community on the issue of succession of States in respect of State property, archives and debts. As a result of the Conference, the rules relating to a very important chapter of international law, which had not previously been clearly defined, had been codified. The Conference had faced a number of very difficult problems but there was no denying that the results achieved were valuable. While the text of the draft convention might not satisfy all delegations, it nevertheless reflected the intent of the international community. The progress which had been made on many articles demonstrated that the Conference had been able to conclude its work with success. Those who opposed the draft convention should reconsider their attitude in the light of historical and current trends.

56. Mr. GUILLAUME (France) said that France had always favoured the process of constructive dialogue between nations, including the North-South dialogue. The draft convention related to a highly technical field and it had been his delegation's hope that a dialogue would develop and that solutions acceptable to all would be reached. The results achieved, particularly the provisions of articles 14, paragraph 4; 26, paragraph 7; 28, paragraph 3; 29, paragraph 4; 31; 36, paragraph 2, and 39 were not satisfactory; his delegation would accordingly vote against the draft convention.

57. The text was not a codification of existing international law and, in many articles, went well beyond accepted practice. It would only bind those States which became parties to it. Issues relating to the succession of States in respect of State property, archives and debts were perhaps best handled bilaterally rather than through a broad convention. The draft contained many vague expressions; his delegation had attempted to devise more acceptable formulas but had been frustrated in those efforts and must register its disappointment at the way in which the convention had been drafted and discussed. It had come to the Conference ready to negotiate but negotiations had not been possible. The process which had been followed was fraught with risks for the whole future development of international law.

58. Mr. ASSI (Lebanon) said his delegation would vote in favour of the draft convention because it regarded it as an important contribution to international law and as an instrument based on the principles of justice and equity. The small States were those which required to be defended in the important field of the succession of States in respect of State property, archives and debts, and the main purpose of the draft convention had been to assure the dignity and sovereignty of all States. The draft convention did not favour one group of States only; the interests of all countries would be served if an atmosphere of good faith prevailed. In the past, the will of the strongest had prevailed and that had led to conflict. During the Conference, the codification process had had to surmount a series of obstacles and the alleged imprecision of some of the articles stemmed from the intentions of those who did not wish to see the issues clarified.

59. Mr. RASUL (Pakistan) said that his delegation had proposed a number of amendments, thus demonstrating that it was not fully satisfied with the draft articles as prepared by the International Law Commission. In a spirit of co-operation and compromise, and in the earnest hope that the convention would promote, rather than obstruct, the amicable resolution of conflicting views, his delegation would vote in favour of the draft convention as a whole, despite the fact that it continued to be dissatisfied with certain provisions on which its position had been made clear in the Committee of the Whole.

60. Mr. BEN SOLTANE (Tunisia) said that his delegation would vote in favour of the convention as a whole. It appreciated the considerable effort made by the International Law Commission in working out the draft convention. It regretted that the Commission's work and effort had been ill rewarded by a number of delegations. Their attitude was hardly likely to encourage a United Nations body composed of eminent jurists, whose integrity and independence were beyond question, to continue the efforts to codify international law.

61. Disagreeing with the views of certain representatives, he said that the spirit of compromise and co-operation had never been absent from the Conference. Nevertheless while it had been possible to find a compromise in respect of a large number of articles, his delegation thought that, on concepts relating to certain fundamental rights, there could be no compromise. Those concepts were often used in various international forums. Their inclusion in the convention merely confirmed the reality of the existence and basic rights of all peoples, without distinction.

62. Mr. TARCICI (Yemen) said that, since the Second World War, the world had taken substantial steps forward and the realities of political and economic life had been modified accordingly. It was essential that international law should develop and keep abreast of reality. The Conference had witnessed the insistence of certain groups on standing on traditional positions. His

delegation believed that the tide of events would persuade those groups to alter such positions in the field of international law as well as in other fields. Progress could not be stopped.

At the request of the representative of Algeria, a vote was taken by roll-call on the draft convention as a whole.

Morocco, having been drawn by lot by the President, was called upon to vote first.

In favour: Algeria, Angola, Argentina, Brazil, Bulgaria, Byelorussian SSR, Chile, Costa Rica, Cuba, Czechoslovakia, Democratic Yemen, Ecuador, Egypt, Gabon, German Democratic Republic, Guatemala, Hungary, India, Indonesia, Iran, Islamic Republic of, Iraq, Jordan, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mali, Mexico, Morocco, Mozambique, Namibia, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Romania, Senegal, Suriname, Syrian Arab Republic, Thailand, Tunisia, Turkey, Ukrainian SSR, USSR, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire.

Against: Belgium, Canada, France, Germany, Federal Republic of, Israel, Italy, Luxembourg, Netherlands, Switzerland, United Kingdom of Great Britain and Northern Ireland, Unitd States of America.

Abstaining: Australia, Austria, Denmark, Finland, Greece, Ireland, Japan, Norway, Portugal, Spain, Sweden.

The result of the vote was 54 in favour and 11 against, with 11 abstentions.

The draft convention as a whole was adopted, having obtained the required two-thirds majority.

63. Mr. TÜRK (Austria), speaking in explanation of vote, said that his delegation greatly regretted that it had had to abstain in the final vote on the draft convention and had thus been unable to support the text which had been elaborated by the Conference. The decision to abstain had been taken not light-heartedly but only on the basis of a serious examination of the final text. The reasons for his delegation's position corresponded to the views it had expressed during the debate and in the various amendments which it had submitted. He proceeded to summarize those reasons.

64. In Part III, the convention invariably used the expression "relating to" to circumscribe the archives-territory link and, on that basis, stipulated the attribution of archives between the predecessor and the successor State. The expression was inappropriate as it could lead to absurd results. In the view of his delegation, the word "appertaining" should have been employed instead. Furthermore, the text of Part III did not incorporate important concepts such as the preservation of the right to privacy with regard to information contained in archives, the preservation of rights of access to archives and the archival concept of joint heritage.

65. Article 31 excluded from the scope of the Convention debts owed to private creditors by States and did not therefore deal with a topic which, in the view of his delegation, was relevant to a succession of States.

66. Despite very serious efforts, it had not been possible to arrive at a compromise solution for a procedure for the settlement of disputes; such a procedure would have been appropriate for the Convention.

67. Several articles of the Convention referred to the principle of permanent sovereignty over national wealth and resources but did not make it clear that that principle, which the Austrian delegation could support, must be applied in accordance with the relevant norms of international law.

68. In many cases the Convention used rather vague terms or made reference to the need for equitable solutions without providing adequate guidelines as to how such solutions should be reached. In the view of his delegation, it should have been possible to agree on a more precise formulation in a number of such cases; Austria had supported a number of amendments to that end.

69. A number of delegations had expressed scepticism regarding the possibility of making further progress in the process of codification and progressive development of international law. His delegation continued to believe however that the efforts made within the existing United Nations system, particularly through the International Law Commission, to codify international law in the interests of the international community as a whole and of the strengthening of peace and international co-operation, would produce positive results in the future. His delegation would continue to support that important process.

70. Mr. BROWN (Australia) said that, because of his country's long history of commitment to the process of codification and progressive development of international law, it was with great regret that his delegation had felt unable to support the adoption of the text of the draft convention.

71. Although the Conference had been convened to codify the law on succession of States in matters other than treaties, it had gone considerably beyond that. It was, of course, not always possible or even desirable to limit such conferences strictly to the codification of the rules of international law. Australia's concern was not that there had been a progressive development of international law in the convention but that some of its provisions went well beyond State practice, precedent and doctrine. As a result the Conference had adopted some articles which had made it impossible for Australia to support the adoption of the Convention.

72. In particular, his delegation considered that the principles reflected in article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3; and article 29, paragraph 4, were not part of customary international law and certainly not recognized by the international community as constituting peremptory norms of general international law from which no derogation was permitted. The votes recorded on those draft articles during the Conference supplied ample justification for that view. His delegation was also concerned about a number of other provisions which contained vague or incomplete terminology, such as article 36. The same comment applied also to article 31, which his delegation felt did not adequately cover an important area of State

debts, namely the class of private debts chargeable to a State.

73. The negotiation of an international instrument, particularly one on such a complex subject as that before the Conference and reflecting such a wide diversity of interests, should, in his delegation's view, be characterized by a willingness by each participant to consider the points of view of other delegations and to reach a mutually acceptable compromise.

74. Australia had sought to work hard to find common ground which would be acceptable to all delegations, and it was a matter of special regret to his delegation that there had been inadequate evidence of a spirit of compromise during the Conference. Indeed the adoption of articles without serious consideration having been given to possible improvements denied the process of negotiation itself. The inevitable result was reflected in the vote on the Convention as a whole, namely, the probability that a convention had been adopted with a limited chance that it would receive sufficient ratifications required to make it a meaningful international instrument.

75. Should that probability be realized, his delegation wished to record its view that many of the articles in the Convention did not reflect either existing rules of customary international law or any degree of wide agreement as to what those rules should be. As a result, their incorporation into the convention could not itself be used as evidence of the rules of contemporary international law on the subject.

76. Mr. BERNHARD (Denmark), explaining his delegation's decision to abstain in the vote, said that Denmark traditionally attached great importance to the process of codification of international law within the United Nations. Many important conventions had been elaborated in the course of that process. The draft considered at the Conference had seemed to be an acceptable basis for negotiations with a view to reaching a balanced solution of the problems involved. His delegation had expected the Conference to take account of the various attitudes which had been reflected in discussions of the draft in the International Law Commission as well as in the Sixth Committee, and had hoped that a widely accepted result could be achieved. Those expectations, however, had not been fully met. As stated during earlier debates, his delegation's main concern related to the maintenance of a number of vague and imprecise concepts not sufficiently well-defined in contemporary international law to provide helpful legal criteria. To let such general principles take precedence over agreements concluded between independent States, as was the case in some articles, seemed problematic and might lead to disputes concerning the validity of the agreements concluded. In that connection, his delegation would have welcomed an efficient system for the settlement of disputes.

77. The text just adopted failed in several respects to reflect the views put forward by a number of delegations, including his own, and he had therefore felt unable to support it. Nevertheless in order not to prejudice future internal considerations regarding Denmark's final position with regard to the present Convention as well as to the 1978 Convention, his delegation had chosen to abstain in the vote on the Convention as a whole.

78. Mr. MUHONEN (Finland) said that Finland attached great importance to efforts to develop and codify international law within the United Nations and hoped that such work would continue in the future. The International Law Commission deserved thanks for the preparatory work it had done. Although not perfect, the draft articles had been acceptable to his delegation as a basis for further deliberations aiming at a balanced solution of the problems involved. A variety of views on the draft articles had been reflected in discussions in the International Law Commission and in the Sixth Committee as well as in written comments submitted by several States. Further views and proposals had been presented during the Conference. It had been his delegation's very sincere hope that the Conference would, through necessary compromises, arrive at a convention acceptable to all States. Regrettably that had not proved possible. The result was a text containing several provisions which his delegation could not find fully satisfactory. Its main concern related to the maintenance of a number of vague and imprecise concepts which were not clearly enough defined to be used as legal criteria. Furthermore Finland would have welcomed a more efficient system for the settlement of disputes. For those reasons in particular his delegation had been unable to vote in favour of the Convention.

79. Mr. NATHAN (Israel) said that, after most careful consideration of the text, his delegation had been regretfully constrained to vote against the Convention as a whole for three main reasons.

80. First, it regretted that the Conference had retained the restrictive scope of the terms of article 31, which limited the definition of the term "financial obligations" to financial obligations arising under international law. That limitation was self-defeating and would probably exclude from the scope of the Convention the major part of the financial obligations of the predecessor State and also, in particular, those arising *ex delictu* and out of violations of fundamental human rights and rules of international law creating correlative rights of private individuals injured by those violations. In that context, he referred to his statements at the 31st and 33rd meetings of the Committee of the Whole.

81. Secondly, his delegation took exception to the far-reaching and extreme provisions contained in article 14, paragraph 4; article 26, paragraph 2; and article 36, paragraph 2. Those provisions went beyond the generally accepted norms of international law and were in no circumstances liable to invalidate the agreements referred to in the clauses in question. The positive contents of some of the principles referred to in those clauses might and should have been embodied in a general article, as had been proposed by the delegation of Brazil at the 33rd meeting of the Committee of the Whole.

82. Thirdly, many of the provisions and notions contained in the Convention were vague and extremely difficult to interpret. It was to be regretted that those deficiencies had not been rectified in the course of the proceedings of the Conference. His delegation did not consider the Convention likely to make the contribu-

tion to the codification and progressive development of international law which it had been intended to make.

83. In conclusion, he expressed his delegation's sincere appreciation of the considerable intellectual effort made by the International Law Commission in preparing the Convention and its regret that those efforts had failed to produce the consensus required in order to make the convention a proper instrument for the codification and progressive development of international law.

84. Mr. MONNIER (Switzerland) said that his delegation had voted against the Conveniton because it had serious objections to a number of provisions, and particularly article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3; article 29, paragraph 4; and article 36, paragraph 2. Those objections, which were legal in nature related to the restrictions upon the freedom of States to conclude agreements resulting from the necessary compatibility of agreements concluded between predecessor and successor States with certain concepts presented and interpreted as imperative norms of international law. Those concepts themselves, as well as their implementation, were liable to give rise to uncertainties prejudicial to the stability of contractual relations, uncertainties rendered all the more grave by the fact that the concepts in question were not clearly defined and did not enjoy general recognition within the contemporary international community. The Convention would have needed a satisfactory system for settlement of disputes that was capable of providing solutions consistent with and based on the rules of international law; but the conciliation procedure adopted by the Conference, which was identical in all respects to that provided in the 1978 Convention, hardly met those requirements.

85. Switzerland, a country dedicated to respect for law, in which it saw the best guarantee of its interests and to the cause of codification and development of international law, regretted having been unable to support the convention. It also deplored the absence of a genuine dialogue between the various States represented at the Conference and the lack of will for compromise, since the general agreement upon which an instrument of codification and development of international law had to be based, could not be only that of the largest number.

86. While it was doubtless too early to raise the question of the future scope of a convention which so considerable a minority had been unable to support, it was altogether possible and, indeed, necessary to entertain fears as to the future of the very process of codification and development of international law if conferences to come were to be marked by the same conflicts and divisions as, unfortunately, had been the case with the present Conference.

87. Mr. MURAKAMI (Japan) said that in the opinion of his delegation there were only a few established rules of general international law in the area of succession of States in respect of State property, archives and debts. Consequently, although some provisions of the present Convention were of a declaratory nature, many did not reflect existing rules of general international law but were rather new rules of a purely contractual nature which were binding only on those States which would become parties to the convention.

88. At the same time, considerable effort had been put into preparing a convention which could contribute to the progressive development of international law but, to make such a contribution, a convention had to be rational, realistic and flexible and anticipate the general acceptance of the international community as a whole.

89. As the Japanese delegation had stressed at the 13th meeting of the Committee of the Whole, due regard had to be paid in the convention to the importance of agreement between the parties involved, as well as to such principles as good faith, sovereign equality of States and self-determination of peoples. It was equally important to bear in mind the need to maintain legal order and stability in the international community. It was most regrettable that some provisions of the present Convention did not fulfil those essential conditions.

90. The Japanese delegation was particularly concerned about the disregard, in several articles of the Convention, for the importance of agreement between the parties although one of the most serious questions which had existed in the draft in that respect had rightly been solved by the deletion of paragraph 2 of article 34 as proposed by the International Law Commission.

91. The Japanese delegation also regretted the erroneous interpretation given by some delegations to article 14, paragraph 4; article 26, paragraph 7; article 36, paragraph 2; and other similar provisions. Those delegations had argued that the principles or conditions set forth in those paragraphs would have the effect of nullifying any agreement contrary to them, that was concluded between the predecessor and successor States which were parties to the Convention. On that account the Japanese delegation had felt compelled to re-state its view whenever those paragraphs has been discussed in the Committee of the Whole. Some delegations had even stated that they regarded the principle of the permanent sovereignty of every people over its wealth and natural resources as *jus cogens*. The Japanese delegation could not accept that view.

92. The frequent use of vague and imprecise phrases in the Convention, most inappropriate in a legal instrument, was another cause for concern, and one which had been deepened by the failure to adopt an effective mechanism for the settlement of disputes.

93. Even more damaging to the efforts towards progressive development of international law however had been the general atmosphere of politicization and the method of work of the Conference, which had been characterized by resort to voting without sufficient effort to accommodate the views of an important minority through negotiation. Such a method was really a step backwards in the process of progressive development of international law and its codification as a whole.

94. For all of those reasons, the Japanese delegation had serious concerns about a number of provisions of the Convention and strong doubts about its general acceptability and validity as something which contributed to the progressive development of international law. It had therefore been unable to vote in favour of the Convention as a whole. It was his delegation's under-

standing that many of the provisions of the Convention were binding only on the parties thereto.

95. It was to be hoped that the method of work and the negotiating pattern of the Conference would not become a precedent for future conferences of a similar nature. A truly effective convention purporting progressively to develop international law had to reflect a broad consensus of views of States with differing interests so that it would become widely accepted in the international community. Without such consensus-building, any future efforts aimed at the progressive development of international law would be futile, and any legal instrument emanating from such an exercise would merely be a non-working document.

96. Mr. FREELAND (United Kingdom) said that his delegation fully reconcurred with the statement made by the representative of the Federal Republic of Germany on behalf of the 10 member States of the European Communities.

97. However his delegation also considered it important to place on record its own position on the adoption of the text of the Convention as a whole, since his country had a number of particular concerns in relation to the draft text which had regrettably not been met.

98. His delegation had already explained United Kingdom practice in relation to its dependent territories, particularly in the statements which it had made when the Committee of the Whole, at its 41st meeting, had considered its amendment to article 2 (A/CONF.117/C.1/L.56). That practice was the one adopted when nearly one-third of the present members of the Unitd Nations had achieved independence. The United Kingdom continued to regard the practice as a sensible, convenient and successful one but, to his delegation's regret, the draft text before the Conference took no adequate account of it. That was a regrettable gap in the provisions of the text of the Convention.

99. For the reasons which it had already given, his delegation could not accept the references in articles 14, 26, 28, 29 and 36 of the draft text to "the principle of permanent sovereignty over wealth and natural resources" and to certain other so-called rights. It did not accept that those principles and rights had the force of *jus cogens*. To suggest that bilateral agreements might be invalidated by virtue of those vaguely-formulated principles and rights would, in its view, be a very dangerous path to follow, because it would lead to the undermining of stability in international relations and even to the undermining of the rule *pacta sunt servanda*.

100. His delegation had made clear that it had difficulties with a number of the articles of the draft text. In particular it found quite unacceptable the rule set out in article 36, paragraph 1. That rule was not supported by State practice and, in his delegation's view, was an unreasonable one. Indeed Part IV of the draft text dealing with State debts was wholly inadequate. In particular, following the refusal of the Committee of the Whole to include the words "other financial obligations chargeable to a State" in article 31, it seemed to his delegation that there was a very serious gap in the draft text.

101. There had also been some suggestion that States not parties to the Convention whose debtors were subjects of a succession of States would be bound by the rules laid down in the Convention. In his delegation's view there was no foundation for that suggestion, particularly given the terms of former article 34.

102. The representatives of the Netherlands and Denmark had submitted to the Committee of the Whole a very reasonable proposal (A/CONF.117/C.1/L.25/Rev.1/Corr.1) for provisions for the settlement of disputes. Since the text before the Conference had included, perhaps of necessity, a number of phrases such as "in equitable proportions", which were vague and even subjective in meaning, his delegation had thought it even more necessary that the instrument adopted should include provisions to ensure that disputes were settled through compulsory recourse to arbitration. It was therefore disappointed that the Convention, as adopted, did not include any requirement for the compulsory arbitration of disputes. Even the relatively moderate proposals made by the representatives of Austria and Switzerland had been rejected.

103. His delegation had been unable to support a substantial number of the articles of the text before the Conference. Furthermore, it agreed with the representative of the Federal Republic of Germany in considering the way in which the Conference had carried out its work to be unsatisfactory. Some light might have been thrown on the reasons for that state of affairs by a representative who, speaking before the vote, had referred to the new international economic order and related matters. The search, already difficult enough, for solutions to issues with which the Conference was properly concerned had been made much harder, or even impossible, by the desire of some to score points on issues which were not the true concern of the Conference and which were matters for negotiation elsewhere, negotiation in which his country was playing its part. He refuted the suggestion that it was those who cast negative votes who prejudiced the progress of codification. If blame had to be attributed, it should, in his delegation's view, rest squarely with those who, despite protestations to the contrary, had failed to accommodate the legitimate difficulties, carefully and frequently explained, of others. His delegation had not fallen short in its efforts to help find common ground.

104. He regretted that his delegation could not regard the text before the Conference as representing either a codification of existing international law or as representing emerging rules of customary international law. It would have no legal force except as between the eventual parties to it. Accordingly his delegation could not support the text and had found itself obliged to vote against its adoption. In view of his country's record of support for the process of codification and the work of the International Law Commission, he hoped very much that that experience would not be repeated.

105. Mr. ANDRESEN (Portugal) said that his delegation regretted not having been able to join the majority in the Conference. There were two reasons for its abstention in the vote. The first was a substantive reason related to the contents of certain provisions

which had been adopted. His delegation had had occasion in the course of the work of the Committee of the Whole to explain the reasons which had led it to vote against articles 14, 26 and 36, which in its view ran counter to legal values and principles. Secondly, there was the equally important question of procedure, since his delegation attached considerable importance to the codification of international law. In its view such codification must respect the legal interests and values of the international community and also reflect international practice generally accepted as law. The interests of the international community had not been weighed in an equitable fashion. The positions of a substantial number of delegations had not been taken into account. A United Nations convention of universal scale which was designed to become *jus cogens* should not be negotiated in such a fashion.

106. Mr. MAAS GEESTERANUS (Netherlands) said that, at all stages of the Conference, his delegation had consistently pleaded and actively sought, in co-operation with other delegations from all regions, to find generally acceptable texts for a number of articles. While thanking those delegations which had supported those endeavours, it deplored the fact that a will for serious negotiation and a spirit of compromise had manifested themselves only to a limited extent in the Conference and that the combined efforts of a number of delegations had failed to convince the majority and, on points of real importance to his country, had remained largely without success. In addition to concurring with the statement already made by the delegation of the Federal Republic of Germany on behalf of the member States of the European Communities, his delegation wished, in particular, to refer to the fact that the text of the Convention just adopted contained, in a number of clauses, concepts which seemed to suggest the existence, outside the Convention itself, of certain principles or norms of international law that could limit the freedom of States to conclude treaties among themselves. His delegation, confirming the views it had already expressed on each of those clauses in the Committee of the Whole, wished to repeat that it did not recognize that the principles or norms of international law in question existed, or at least that they already existed, in general international law. Neither were such principles or norms defined in any precise manner in the articles of the present Convention. It was specifically with regard to those clauses that his delegation had felt regretfully compelled to cast a negative vote on the convention as a whole. It had done so in order to avoid the erroneous assumption which might otherwise have arisen that his Government accepted that the concepts in question reflected existing principles or norms of international law. In addition, he felt obliged to remark that, aside from the concepts just mentioned, the text of the Convention used expressions such as "equity" and "equitable proportions" which, in practice, would be very difficult to apply in the absence of new machinery for compulsory adjudication, or at least arbitration, in disputes concerning the interpretation and application of the Convention.

107. Mr. OLWAEUS (Sweden) expressed his delegation's regret at having had to abstain in the vote on the convention as a whole and associated himself with the explanatory statements made by the representatives of Denmark and Finland.

108. Mrs. OLIVEROS (Argentina) said that her delegation had voted in favour of the convention. She regretted that there had been so many votes against it and so many abstentions. The law could not turn its back on reality and, in her delegation's view, the Convention answered a real need. Her delegation welcomed the Convention's recognition of the importance to peoples of their right to permanent sovereignty over their natural resources. It also appreciated the place given in each of the five Parts of the Convention to negotiation and agreement between the parties. Nothing was more constructive than dialogue in good faith which always led to progress in friendly relations among States.

109. The convention was the outcome of many years of work and it was to be hoped that the International Law Commission would continue its labours for the benefit of the international community. Her delegation was grateful to all the distinguished scholars who had been concerned in the preparation of the text, especially the Special Rapporteur. She also wished to thank the Codification Division of the Office of Legal Affairs of the United Nations, the Legal Counsel, the President of the Conference, the Chairmen of the Committee of the Whole and of the Drafting Committee and Austria, the host country.

110. Mr. ECONOMIDES (Greece) said that his delegation had, with regret, abstained in the vote on the draft convention. It had done so for three main reasons, in addition to those given by the representative of the Federal Republic of Germany. In the first place, article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3; article 29, paragraph 4; and article 36, paragraph 2, had been drafted in a manner which was legally unusual and inappropriate. It appeared moreover from the wording of those provisions that it had been desired to produce certain effects which could not be achieved by an international convention. A rule of *jus cogens* in international law could only be the outcome of international practice which was virtually accepted as an imperative norm, and not otherwise. Furthermore, all the provisions he had mentioned and particularly article 14, paragraph 4, and article 36, paragraph 3, should contain an express reference to international law.

111. Secondly, there was a reference in certain provisions to equity, either without explanation—which was the case in articles 16, 17 and 21—or with insufficient explanation—as was the case in articles 38 and 39. He conceded that equity could constitute a rule of law, but in order to do so it had to be legally constructed and rest upon an adequately developed foundation. Without that foundation and objective criteria for its application, equity was not a legal norm but an *ex aequo et bono* solution which required the consent of the parties concerned. His delegation was not prepared to give its unconditional consent to formulations which were currently without content or which were insufficiently explicated.

112. The third reason for his delegation's abstention was the fashion in which the Conference had been

conducted. Instead of providing, as it should have done, a framework for negotiations undertaken in the spirit of constructive dialogue and mutual understanding, it had played the ungrateful part of rubber stamping decisions already taken by the International Law Commission, all of whose recommendations his delegation did not approve. His delegation sincerely regretted that method of proceeding. The Conference constituted a bad precedent for the success of codification and the progressive development of international law, which required goodwill in order to produce a text acceptable to all. It was to be hoped that that example would not be followed in the future.

113. Mr. DONS (Norway) said that his delegation had abstained in the vote on the convention as a whole for the same reasons as the delegations of Denmark, Finland and Sweden.

114. Mr. FARES (Democratic Yemen) said that his delegation had voted in favour of the Convention because it was convinced that the progressive development and codification of international law were matters of the utmost importance. Notwithstanding the many criticisms addressed to the International Law Commission and to the text just adopted by speakers both before and after the vote, he felt that the success of the Convention was assured. None of the arguments advanced by the opponents of the Convention could reverse the course of history, halt the progressive development of international law or reduce the juridical value of the Convention. The International Law Commission and, in particular, the Expert Consultant were to be thanked for their invaluable efforts.

115. Mr. AKA (Ivory Coast) said that, for reasons beyond its control, his delegation had been absent from the conference room during the voting. He wished to put it on record that, had it been present, his delegation would have voted in favour of the convention.

116. Mr. YÉPEZ (Venezuela) said that his delegation had voted in favour of the convention, which it believed to represent a substantial contribution to the process of codification and progressive development of international law.

117. The draft prepared by the International Law Commission over a period of years—which, incidentally, took full account of opinions expressed in the Sixth Committee of the General Assembly—had not needed modification. The Commission and, in particular, the Expert Consultant deserved the Conference's thanks, as also did the host country and the President of the Conference. If the text just adopted was not satisfactory to all delegations, that was certainly not the fault of the Group of 77, which had made many constructive and positive efforts and had reached a number of useful compromises. His delegation had noted with surprise, concern and some apprehension that the developed countries, possessing the largest capacity for the use of force, were radically opposed to recognized principles such as that of equity and of the permanent sovereignty of peoples over their wealth and natural resources.

118. In conclusion, he reiterated his delegation's view that the Convention, as adopted, satisfied the interests of the majority of the international community. He thanked the Chairmen of the Committee of the Whole and of the Drafting Committee for their excellent work.

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE (A/CONF.117/11 and Add.1-12)

The report of the Committee of the Whole was adopted.

ADOPTION OF THE REPORT OF THE CREDENTIALS COMMITTEE (A/CONF.117/12)

119. Mr. do NASCIMENTO e SILVA (Brazil), Chairman of the Credentials Committee, introducing the report of that Committee (A/CONF.117/12), informed the Conference that subsequent to the Committee's meeting on 6 April 1983, credentials complying with the requirements of rule 3 of the rules of procedure of the Conference had been received in respect of the representatives of Democratic Yemen, the Libyan Arab Jamahiriya and Spain. Consequently, the credentials from those States should be reflected under subparagraph 4(*a*) instead of subparagraph 4(*c*) of the report. The secretariat had also received a note verbale issued by the Permanent Mission of Uruguay in Vienna, and consequently that State's credentials should be reflected in subparagraph 4(*c*) instead of subparagraph 4(*d*).

120. Finally, he drew the attention of the Conference to the draft resolution contained in paragraph 8 of the report, which the Committee recommended for adoption.

121. Mr. BEN SOLTANE (Tunisia), speaking on behalf of the States members of the League of Arab States, expressed their reservation in respect of Israel's attendance at the Conference, which they wished to be reflected in the summary records. That reservation did not, however, mean that they opposed the adoption of the report of the Credentials Committee as a whole.

122. Mr. NATHAN (Israel) pointed out that, as stated in subparagraph 4(*a*) of the report, credentials in respect of the representative of Israel had been received and duly examined by the Credentials Committee in accordance with rule 3 of the rules of procedure. His delegation had been invited to attend the Conference by the Secretary-General of the United Nations, pursuant to General Assembly resolutions 36/113 and 37/11. Moreover, once those credentials had been accepted by the Credentials Committee, they could no longer be questioned by representatives of other delegations.

123. Mr. KOLOMA (Mozambique) explained that he, the only representative of Mozambique at the Conference, had not come direct to Vienna from his country but from Geneva, where he had been attending another conference. The telex message that he had received in Geneva requesting him to represent his country at the Vienna Conference had stated that the problem of his credentials had been settled directly with the Secretary-General of the United Nations by means of a telex sent by the Mozambique Ministry of Foreign Affairs on 24 February 1983. Since, on his arrival in Vienna on

3 March 1983, he had found his name on the list of participants, he had thought that his credentials were in order. He very much regretted that he had not been informed that there was a problem about them until he had read subparagraph 4(*d*) of the report of the Credentials Committee.

124. Mr. do NASCIMENTO e SILVA (Brazil), Chairman of the Credentials Commitee, apologized to the representative of Mozambique and said that, as soon as the Secretariat located a copy of the telex, the name of Mozambique would be inserted in subparagraph 4(*b*) of the report.

125. Mr. JOMARD (Iraq) asked if the Credentials Committee had in fact examined the credentials one by one, as was customary.

126. Mr. do NASCIMENTO e SILVA (Brazil), Chairman of the Credentials Committee, said that the Committee had followed the normal procedure in that the credentials documents had been carefully scrutinized by the secretariat which had made a résumé of their contents for the Committee.

127. Mr. JOMARD (Iraq) and Mr. AL-KHASAWNEH (Jordan) said that, since the work of the Credentials Committee had not been properly performed, their delegations felt obliged to express reservations on the report of that Committee, which they wished to be reflected in the summary record.

128. Mr. do NASCIMENTO e SILVA (Brazil), Chairman of the Credentials Committee, said that the membership of the Committee had included a representative of the League of Arab States who could have raised the matter during a meeting of the Committee.

129. Mr. DI BIASE (Uruguay) explained that the Permanent Mission of Uruguay in Vienna had sent to the secretariat the note verbale mentioned by the Chairman of the Credentials Committee because he had been informed that the credentials of his delegation were not in order, even though the correct names had been included in the list of participants.

130. The PRESIDENT said that, in the absence of any objection, he took it that the Conference now wished to adopt the report of the Credentials Committee (A/CONF.117/12), subject to the reservations expressed by certain delegations.

It was so decided.

Draft resolution submitted by the Syrian Arab Republic (A/CONF.117/L.1)

131. Mr. MARCHAHA (Syrian Arab Republic), introducing draft resolution A/CONF.117/L.1, said that the preambular part was based on the Charter of the United Nations and the Convention just adopted by the Conference. Paragraph 1 was taken from General Assembly resolution 3166 (XXVIII), paragraph 2 referred to a principle with which the majority of the participants in the Conference agreed, and paragraph 3 linked the draft resolution with the Convention just adopted by the Conference. He hoped that the draft resolution would be adopted without a vote.

132. Mr. ROSENSTOCK (United States of America) said that, since he regarded the resolution as irrelevant to the work of the Conference, he would abstain in the vote upon it. If, on the other hand, it had represented business properly before the Conference, his delegation would have felt constrained to raise objections to the draft resolutions focusing on the right to self-determination of only certain people. It should be remembered that the Charter of the United Nations was based on the principle of equal rights and self-determination for all and it would be unwise and improper to suggest that that principle was applicable to some and not to others. Moreover, had the draft resolution been relevant to the matter being studied by the Conference, his delegation would have felt impelled to object to the language used with respect to permanent sovereignty over wealth and natural resources.

133. Mr. NATHAN (Israel) said that his delegation would vote against the draft resolution because it considered it unnecessary and irrelevant and because it introduced political elements not pertinent to a legal convention.

134. The PRESIDENT invited the Conference to vote on the draft resolution.

The result of the vote was 45 in favour and 1 against, with 25 abstentions.

The draft resolution was adopted having obtained the required two-thirds majority.

135. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had abstained in the vote on the draft resolution because the principles enunciated therein were not consistent with the scope of the Convention and the resolution as a whole appeared to bear no real relevance to the subject matter of the Convention.

136. His delegation had repeatedly stated its Government's position with regard to the principle of permanent sovereignty of peoples over their natural resources. His Government recognized that right but considered that it could be exercised only in accordance with international law. The statements made by his delegation at the 15th and 36th meetings of the Committee of the Whole on 11 March and 28 March 1983 were relevant in that connection.

137. With regard to the right of self-determination, the Government of the Federal Republic of Germany considered that that right, as enshrined in the Charter of the United Nations and embodied in the International Convenants on Human Rights, applied to all peoples and not only to particular categories[2] of peoples.

138. Mr. ECONOMIDES (Greece) said that his delegation had voted in favour of the draft resolution on the understanding that the principles set forth in paragraph 2 were interpreted in accordance with international law.

139. Mr. GUILLAUME (France) said that his delegation had abstained in the vote on the draft resolution for the same reason as had been given by the representative of the Federal Republic of Germany.

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[2] See General Assembly resolution 2200 A (XXI), annex.

Draft resolution submitted by Egypt (on behalf of the Group of 77) (A/CONF.117/L.3)

140. Mr. SHASH (Egypt), introducing draft resolution A/CONF.117/L.3 on behalf of the Group of 77, said that the Conference was fully aware of the background to the draft resolution and the need for a succession of States with respect to Namibia. A draft resolution on the subject adopted by the Conference would make a positive contribution to the efforts being undertaken by the United Nations to ensure the independence of that Territory. The preamble and paragraph 1 of the draft resolution were similar to those of the resolution on the same subject adopted by the 1978 Vienna Conference on Succession of States in Respect of Treaties.[1] Operative paragraph 2 was self-explanatory. In view of the general agreement on the situation in Namibia, he hoped that the draft resolution would be adopted without a vote.

141. Mr. FREELAND (United Kingdom), speaking on behalf of the delegations of Canada, the Federal Republic of Germany, France, the United States of America and the United Kingdom—the five countries members of the contact group concerned with the question of Namibia—said that, in the view of those delegations, it was not within the competence of the Conference to adopt the draft resolution submitted by Egypt on behalf of the Group of 77 (A/CONF.117/L.3). The delegations of those five countries had taken the same position with respect to the comparable resolution adopted by the 1978 Conference on Succession of States in Respect of Treaties.[1]

142. As was clear from its terms of reference, the present Conference should properly be concerned, not with individual cases of succession, but with the drafting of a convention on the question generally. In the light of that consideration, the delegations of the five countries he had mentioned would abstain in the vote on the draft resolution before the Conference.

143. He added that the draft resolution contained terminology, such as the word "Decides" in paragraph 1, which seemed to be open to objection on legal grounds and which reinforced the view of the five delegations on whose behalf he was speaking that, in adopting the draft resolution, the Conference would be exceeding its competence.

144. An additional reason for their abstention was that the five delegations concerned could not see how the adoption of the draft resolution would contribute in any way to the solution—which all desired—of the remaining problems that were still delaying a Namibian settlement. In view of the role which the five countries members of the Contact Group continued to play in the search for such a solution, that was a consideration to which they were bound to give weight.

145. He stressed that his indication of the attitude of the five Governments concerned should not be taken as implying any change in their positions with respect to the various resolutions of the Security Council and the General Assembly referred to in the draft resolution; nor should it be taken as involving any weakening of their determination to do what they could to facilitate a Namibian settlement.

146. Mr. TÜRK (Austria) expressed his delegation's basic agreement with the idea contained in the draft resolution but wished to make a few suggestions for improvement of the text. First of all, the preamble, although similar to that in the previous resolution, was not identical. As a lawyer, he believed that, if a General Assembly resolution was quoted, it should be quoted correctly. Secondly, he felt that the word "Decides" in paragraph 1 was not appropriate, especially since the previous resolution had used the word "Resolves". Thirdly, he did not consider that the present Conference could reserve the rights of the future independent State of Namibia. That should be left to a more appropriate body such as the General Assembly of the United Nations.

147. Mr. SHASH (Egypt) agreed that the preambular paragraphs should be amended in order to ensure conformity with the preceding resolutions. In paragraph 2, his delegation was prepared to amend the wording to read "*Resolves* that, in consequence, all rights of the future independent State of Namibia should be reserved".

148. The PRESIDENT invited the Conference to vote on the draft resolution, as orally amended.

The result of the vote was 55 in favour and none against, with 12 abstentions.

The draft resolution, as orally amended, was adopted, having obtained the required two-thirds majority.

149. Mr. KIRSCH (Canada) inquired whether the resolution just adopted included the oral amendments proposed by Austria and accepted by Egypt.

150. The PRESIDENT replied that the Austrian amendments were included.

151. Mr. TÜRK (Austria) pointed out that the Egyptian delegation had accepted all his proposed amendments except those relating to paragraph 2. The Austrian delegation considered that reservation of the rights of Namibia should be left to a more appropriate body, such as the General Assembly of the United Nations, and that the Conference should merely make a recommendation to that effect.

152. Mr. SHASH (Egypt) apologized for any misunderstanding. With regard to the preambular paragraphs, he was prepared to accept the wording of the parallel resolution adopted by the 1978 Conference on Succession of States in Respect of Treaties. Paragraph 2, on the other hand, would read: "2. *Resolves* that in consequence all the rights of the future independent State of Namibia should be reserved".

153. Mr. LAMAMRA (United Nations Council for Namibia) thanked the Conference for its adoption of the resolution referring to Namibia. He was grateful to the Egyptian delegation which had submitted the resolution on behalf of the Group of 77, to all those who had supported it and to those who had abstained in preference to voting against it. The resolution represented a

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[1] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), document A/CONF.80/32, annex, p. 183.

valuable contribution of the international community in support of Namibia's sovereignty. He was pleased by the successful outcome of the Conference and by the development of international law which it represented.

Adoption of the Final Act of the Conference (A/CONF.117/13)

154. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introduced the draft final act of the Conference (A/CONF.117/13) which, *mutatis mutandis*, reproduced the Final Act of the 1978 United Nations Conference on Succession of States in Respect of Treaties. It also included as an annex the texts of three draft resolutions which it was customary for codification conferences to adopt in connection with the final act.

155. The Drafting Committee recommended the draft final act for unanimous adoption by the Conference.

Draft resolutions of tribute (A/CONF.117/13, annex)

156. The PRESIDENT read out the titles of the draft resolutions (A/CONF.117/13, annex).

157. Mr. TARCICI (Yemen) proposed that a fourth draft resolution to be adopted should be inserted after the "Tribute to the International Law Commission". That fourth draft resolution would read:

> "*Tribute to the President of the Conference and to the Chairman of the Committee of the Whole*
>
> "*The United Nations Conference on Succession of States in respect of State Property, Archives and Debts*,
>
> "*Having adopted* the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts on the basis of the draft articles prepared by the International Law Commission,
>
> "*Expresses its deep appreciation and gratitude* to Dr. J. Seidl-Hohenveldern, President of the Conference and to Dr. Milan Šahović, Chairman of the Committee of the Whole, who, thanks to their sagacity and wisdom in directing the deliberations, together contributed to the success of the Conference."

158. The PRESIDENT thanked the representative of Yemen for his kind proposal.

The four draft resolutions were adopted unanimously.

159. Mr. NATHAN (Israel) said that, were a vote to have been taken on the final act including the resolutions (A/CONF.117/L.1 and L.3) adopted earlier in the meeting, his delegation would have voted against.

160. Mr. BEDJAOUI (Expert Consultant) expressed his gratitude to the participants in the Conference for their appreciative resolution. The Conference had been a great experience for him. He had greatly appreciated the relevant comments made on a subject of great complexity by representatives in whom legal knowledge and diplomatic skills were combined. He was grateful for the improvements they had made to the draft submitted by the International Law Commission, whose members had striven devotedly for so many years to develop a text in furtherance of the codification and progressive development of international law. He wished to share with all the members of the Commission the thanks expressed to him personally.

161. He hoped that the dissatisfaction felt by some delegations with the final text would be finally overcome in a spirit of understanding. That would be the Commission's best recompense for its work.

162. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Committee of the Whole, also thanked the representative of Yemen and the Conference for the resolution it had just adopted. He, and all who had held office during the Conference, had done their best to contribute to the preparation of the Convention, whose final conclusion had been immeasurably facilitated by the work of all members of the Secretariat, with whom he shared the appreciation expressed.

163. The PRESIDENT called on the Conference to vote on the final act, apart from the resolutions annexed thereto.

164. Mr. FREELAND (United Kingdom) proposed that the final act be adopted by acclamation and without a vote.

165. Mr. ŠAHOVIĆ (Yugoslavia) seconded that proposal.

The Final Act of the Conference was adopted by acclamation.

166. Mr. NATHAN (Israel) said that his approval of the Final Act was subject to the reservations he had expressed earlier. He wondered whether paragraph 20 of the document should not be amended to indicate that the resolutions had been adopted separately.

167. The PRESIDENT said that there appeared to be no need to amend the paragraph, which stated correctly that the Conference "also adopted" the resolutions.

CLOSURE OF THE CONFERENCE

168. Mr. ROMANOV (Executive Secretary of the Conference) said that the ceremony of signature of the Final Act of the Conference would take place on Friday, 8 April 1983, at 7 p.m. in the Festsaal of the Hofburg.

169. The PRESIDENT thanked all who had participated in the Conference, whose successful outcome was a matter of great satisfaction to him. The Austrian Government had been proud to have acted as host to the Conference in Vienna and he, personally, had been pleased to make the acquaintance of so many distinguished lawyers from so many countries.

170. He then declared the Conference closed.

The meeting rose at 7.30 p.m.

SUMMARY RECORDS OF MEETINGS OF THE COMMITTEE OF THE WHOLE

1st TO 44th MEETINGS

SUMMARY RECORDS OF MEETINGS OF THE COMMITTEE OF THE WHOLE

1st meeting

Wednesday, 2 March 1983, at 10.20 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Election of the Vice-Chairman

1. The CHAIRMAN invited nominations for the office of Vice-Chairman of the Committee of the Whole.

2. Mr. SHASH (Egypt), speaking on behalf of the group of African States, nominated Mr. Moncef Benouniche (Algeria) for the office of Vice-Chairman.

3. Mrs. BOKOR-SZEGÖ (Hungary), speaking on behalf of the group of Eastern European States, seconded the nomination.

Mr. Moncef Benouniche (Algeria) was elected Vice-Chairman by acclamation.

Election of the Rapporteur

4. The CHAIRMAN invited nominations for the office of Rapporteur of the Committee of the Whole.

5. Mr. MURAKAMI (Japan), speaking on behalf of the group of Asian States, nominated Mrs. Thakore (India).

6. Mr. SHASH (Egypt) seconded the nomination.

Mrs. Thakore (India) was elected Rapporteur by acclamation.

Organization of work

7. The CHAIRMAN drew attention to paragraphs 9 and 23 to 26 of the memorandum of the Secretary-General on the organization of work (A/CONF.117/3) which the Conference had approved at its 2nd plenary meeting. He pointed out that, in paragraph 7 of that document, it was suggested that the Committee might find it appropriate to defer consideration of Part I of the draft articles until it had concluded its initial consideration of the remaining three Parts. In the absence of objection, he would take it that the Committee agreed to start its work by considering Part II on "State property", beginning with article 7.

It was so decided.

8. The CHAIRMAN drew attention to annex 1B, section 1, of document A/CONF.117/3 which set out a tentative timetable for the Committee's consideration of the draft articles.

9. Mr. MONNIER (Switzerland) said it would be useful to establish that the timetable was to be regarded only as a guide and that the allocation of specific weeks for the consideration of particular groups of articles would not preclude delegations from subsequently submitting new articles related to those groups.

10. The CHAIRMAN said that the Conference had authorized the Committee to apply in a flexible manner the recommendations in document A/CONF.117/3. He pointed out however, that the Committee must have completed its work by 1 April.

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 7 (Scope of the articles in the present Part)

11. Mr. GUILLAUME (France) said that, although he had no difficulty with the article, it was evident that the scope of the articles in Part II depended on the definition in article 2, paragraph 1(*a*), of "succession of States", on which the Government of Canada had made some interesting comments, as reproduced on page 59 of document A/CONF.117/5. The text of article 7 could not be definitively established until article 2, paragraph 1(*a*) had been adopted.

12. Mr. ECONOMIDES (Greece) wondered whether it was necessary for the Convention to contain four similar introductory articles in the shape of articles 1, 7, 18 and 30. Those four articles should in any case be considered in conjunction by the Drafting Committee.

13. Mr. LEHMANN (Denmark) agreed with the Greek representative. He would be inclined to have a definition of scope only in article 1, as in the Vienna Convention on Succession of States in respect of Treaties.[1]

14. Mr. TÜRK (Austria), supporting the previous speaker, suggested that the substance of article 7 should be considered in conjunction with the general provisions in Part I.

15. Mr. TURNARITIS (Cyprus) and Mr. SHASH (Egypt) supported that suggestion.

16. Mr. DJORDJEVIĆ (Yugoslavia) said that he could accept article 7 in its present position but had no objection to its being considered in conjunction with

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[1] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

article 1. He suggested that the matter should be referred to the Drafting Committee.

17. Mr. MONCEF BENOUNICHE (Algeria) said that the issue was related to the structure of the convention. He agreed with the International Law Commission that, for the sake of clarity, it was appropriate to define the scope of the articles in each Part at the beginning of that Part.

18. Mr. GUILLAUME (France) said that the choice lay between having a general provision on scope and having a provision at the beginning of each Part.

19. The CHAIRMAN suggested that the Committee should defer further consideration of article 7 in view of its link with article 1 and other introductory articles and should request the Drafting Committee to give its views on the structure of the convention.

It was so decided.

Article 8 (State property)

20. Mrs. BOKOR-SZEGÖ (Hungary) suggested that it would be more logical to include a definition of State property in article 2, since the term occurred not only in Part II but also in articles 35 and 36 in Part IV.

21. Msgr. PERESSIN (Holy See) observed that there was some inconsistency between the title of article 8 and its text, in that the former mentioned only "State property" whereas the latter referred also to rights and interests. It should be made quite clear that "State property" included rights and interests.

22. Mrs. THAKORE (India) said that article 8, like article 19 on State archives, defined State property in terms of the internal law of the predecessor State, its purpose being, like that of article 19, not to settle the fate of the State property of the predecessor State but merely to establish a criterion for determining such property. The reference to the internal law of the predecessor State as the criterion for determining State property was logical because, unless the title was vested in the predecessor State under its internal law, no question of succession to the property could really arise. The internal law determined not only the existence of title to property rights and interests but also the attribution of that title to the State. The Indian delegation consequently agreed with the view expressed by the Special Rapporteur that, in determining what property belonged to the predecessor State, or the property which the predecessor State considered to belong to it, its internal law inevitably had to be consulted. Her delegation noted with satisfaction the clarification given in paragraph (11) of the International Law Commission's commentary on article 8 (see A/CONF.117/4). It understood that the term "internal law of the predecessor State" as used in article 8 would be broadly construed to include treaties which had been ratified by that State, irrespective of any national requirement for legislation to put the treaties into effect. It would be glad to hear from the Expert Consultant why the Commission had not considered it necessary to define the concept of internal law in article 2, since most members of the Commission had seemed to favour such a definition.

23. Subject to those comments and to such clarification as might be given by the Expert Consultant, the Indian delegation supported the definition of State property in article 8. That definition should not be complicated by the addition of a reference to public or private international law as had been suggested by some representatives in the Sixth Committee of the General Assembly. All members of the International Law Commission appeared to have taken the same view on that point.

24. Mr. SUCHARITKUL (Thailand) said that the scope of article 8 was based on the combination of two basic criteria, the time of the succession of States and the system of internal law of the predecessor State. That was clear from paragraph (1) of the International Law Commission's commentary on article 8. If, therefore, the predecessor State decided to dispose of State property immediately prior to the succession, that property would be excluded from the scope of the present convention. He therefore considered that some safeguards with regard to the property of the successor State should be introduced.

25. Mr. NATHAN (Israel) said that the International Law Commission had been wise to include both State property belonging to the public domain and that belonging to the private domain in one definition, thus ruling out any distinction between property owned by the State *de jure imperii* and property owned by it *de jure gestionis*, the test being solely and exclusively that of ownership, irrespective of the purpose which the property served.

26. According to the definition in article 8, the term "State property" would include only property, rights and interests owned directly by the State as such. That excluded public property indirectly owned by the State through public corporations fully owned by the State. With the considerable expansion of its activities in the economic sphere, the State tended increasingly to conduct its public economic activities through such corporations which, although often functioning for all practical purposes as Government departments, nevertheless operated as separate legal entities. If the term "State property" referred only to property owned directly by the State, to the exclusion of such public State-owned or State-controlled corporations, an anomalous situation might arise in many cases of State succession. Public economic enterprises of the largest order and utmost importance for the economic infrastructure of the State which were organized in the form of such wholly owned or controlled State corporations would, as such, be outside the scope of the proposed convention. Furthermore, since they would not qualify as State property, they themselves would not pass as State property from the predecessor State to the successor State, while the shareholding of the predecessor State in them would. A much wider concept of State property had been applied in recent State practice in the definition of the term "State or para-State property" in paragraph 1 of annex XIV to the Treaty of Peace with Italy of 1947.[2] That definition included, *inter alia*, movable and immovable property of public institutions and public and publicly-owned companies and associations.

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[2] United Nations, *Treaty Series*, vol. 49, p. 3.

27. *Prima facie* the term "State property" would also include "State archives", as the Commission had indicated in its commentary on draft article 18. State archives being dealt with in a separate part of the draft articles, article 8 might usefully indicate that the term "State property" meant "State property other than State archives".

28. Mr. CHO (Republic of Korea) said that his delegation could accept article 8 as drafted by the International Law Commission, provided that the criterion of State property was determined by the internal law of the predecessor State.

29. Mr. FREELAND (United Kingdom) underlined the need to consider the content of article 8 in close association with whatever might later be agreed for inclusion in article 2. A number of the terms used in article 8 would have to be defined in article 2, which would therefore affect the scope of article 8. Article 8 in its present form created some degree of uncertainty when read in relation to United Kingdom practice in the granting of independence to former dependent territories of the United Kingdom. Under that practice, two legally distinct governments were involved; the Government of the United Kingdom and the government of the dependent territory, which by the time of independence would own by far the greater part of the State property in the territory. What should and did happen was that the property of the government of the dependent territory passed to the new international entity, namely the government of the newly independent State. Provision for such situations should be made in article 8, as it would also need to be made elsewhere in the draft; but no final position could be taken on the matter until the effect of article 2 on article 8 became clear.

30. Mr. OESTERHELT (Federal Republic of Germany) said that further clarification of article 8 was needed. He shared the view of many delegations in the Sixth Committee of the General Assembly that the term "rights and interests" should be further examined, particularly in relation to their scope. With regard to the reference to the "internal law of the predecessor State", he endorsed the view expressed in paragraph (8) of the commentary on article 8.

31. Mr. MURAKAMI (Japan) said that, according to the present draft article 8, "State property" included the "rights and interests" of a State. If interpreted widely, those rights and interests might include rights and interests provided for by treaties. The application of two treaties, namely the present convention and the Vienna Convention on Succession of States in respect of Treaties might thus arise. It was his delegation's understanding that, in such a case, the latter Convention would prevail over the former. On the question of succession of States in respect of such matters as a State's subscription to the capital stock of certain international institutions, it was also his delegation's understanding that the constituent instrument and the internal rules of the institution concerned should prevail over the provisions of the proposed convention.

32. Mr. DJORDJEVIĆ (Yugoslavia) said that the definition in article 8 might usefully be inserted in article 2 together with the other definitions, so that its scope might be extended to the draft articles as a whole. It would also be useful to consider article 8 in conjunction with articles 19 and 31. He agreed with those speakers who had seen the reference to internal law as a problem and felt that some further clarification was needed. Paragraph (11) of the International Law Commission's commentary on article 8 provided a useful basis for further consideration of the question.

33. Mr. MONNIER (Switzerland) said that his delegation could accept the definition of State property in article 8 as property, rights and interests by reference to the internal law of the predecessor State. As he saw it, such a reference to internal law was the only way to define the concept, since international law provided no definition of its own. The Swiss delegation was satisfied with the comments in paragraph 11 of the commentary on article 8.

34. The Swiss delegation could agree to the present article 8 being either icluded in article 2 or appearing at the beginning of Part II. However, its inclusion in article 2 might overburden that article and cause difficulties elsewhere.

35. Mr. SHASH (Egypt) drew attention to an inconsistency in the Arabic translation of the term "State property" which undoubtedly caused some confusion for the representatives of Arabic-speaking countries. The translation as it appeared in the title of article 8 should be used throughout. In his view, all the articles containing definitions should be considered when Part I was examined, at which time the concept of State property, too, could be further clarified.

36. Mrs. OLIVEROS (Argentina) said that there appeared to be some confusion between the concept of State property as used in the title and as defined in article 8. According to Argentina's legal system, which was based on Roman law, "property" was understood to mean real property and also movable property; linking those with "rights and interests", which were covered in different parts of the Argentine legal code, could give rise to confusion. It was therefore essential to define State property clearly, either as something tangible, or as something less tangible, as represented by the State corporations and State activities referred to by the representative of Israel.

37. Regarding the possibility of including a definition of State property in article 2, she suggested that the Drafting Committee should consider establishing a unified concept since the concepts of property, rights and interests appeared to differ in the various parts of the draft articles.

38. Mr. GUILLAUME (France) said that, in his delegation's view, the only way of defining State property was to refer to the internal law of the predecessor State, as the International Law Commission had done for the reasons given in paragraph (11) of its commentary. However that was not a complete solution. As the representative of Argentina had pointed out, for countries with a basis of Roman law, the concept of property was clear but the concept of rights and interests was less clear. In paragraph (10) of its commentary, the Commission had stated that the expression "property, rights and interests" referred only to rights and interests of a legal nature, but that merely raised the

question of what a legal interest was. Further thought was therefore required, particularly in the light of the jurisprudence in the treaties quoted in the same paragraph.

39. A further problem was that "property, rights and interests" could be associated with obligations or commitments entered into with third parties in respect of land or buildings (such as mortgages and encumbrances). It was clear that the definition given in article 8 meant "including any obligation attaching thereto". If everybody was in agreement, it would not be necessary to amend article 8; if there was any doubt, the article would have to be redrafted. It also seemed that "property, rights and interests" associated with a State meant only those directly involved with the State and not those aspects associated with corporations or private individuals involved in economic activities, since they were not directly State property.

40. Mr. DI BIASE (Uruguay) drew attention to the comments of his Government which were to be found in documents A/37/454/Add.1 and A/CONF.117/5. It seemed wrong to include "rights and interests" in a definition of property and the expression "interests" in particular might extend the scope of the article beyond what was intended. It should therefore be removed.

41. Mr. SAINT-MARTIN (Canada) endorsed the comments made by the representative of France. One of the general principles of law was that no one could pass on to another more rights than he possessed. Consequently the passing to the successor State of the State property of the predecessor State therefore included all the obligations associated with the property concerned.

42. Mr. BOSCO (Italy) said that it was very difficult to provide a proper definition of the general concept of "property, rights and interests" in a convention of a universal type. The International Law Commission, recognizing, as was indicated in paragraph (4) of its commentary on article 8, that no generally applicable criteria could be deduced from treaty provisions, had simply referred to the internal law of the predecessor State. That could have different consequences however according to the legal system concerned.

43. The CHAIRMAN observed that a number of problems had already been identified by various speakers which might to some degree at least be clarified by the Expert Consultant upon his arrival. A list of the questions which had been raised explicitly or implicitly during the discussion would therefore be kept to that end.

44. Mr. ECONOMIDES (Greece) said that, from the standpoint of the presentation of the draft articles, he tended to agree that the provisions of article 8 would be better included in article 2. As far as substance was concerned, he shared the view that "State property" was a broad concept covering not only property in the traditional sense but also less tangible aspects, including the matter of obligation.

45. For his delegation, the crucial problem in article 8 was the lack of a definition of the concept of a State. Under the present wording, the term could be defined by the predecessor State itself according to its own legislation. He agreed with the United Kingdom delegation that article 8 should be studied in conjunction with the definition of the term "predecessor State" under article 2.

46. Mr. MONCEF BENOUNICHE (Algeria) said that article 8 appeared to draw a distinction between the nature of property and the owner of property. So far as the latter was concerned, he shared the concerns of the representative of Greece.

47. Mr. LEHMANN (Denmark) observed that it was very difficult to establish a general definition of the concept of property which would be applicable to all international systems. State property should be defined as meaning all that was owned by the predecessor State, according to its internal law, at the date of the succession.

48. He agreed that the use of the word "property" in a definition of the concept of property was not felicitous. Since the key purpose of article 8 was to cover the applicability of internal law, the article should perhaps concentrate on providing a clear definition of State ownership and leave aside the question of the property law of individual States.

49. Mr. MIKULKA (Czechoslovakia) supported the proposal by the Hungarian delegation regarding the position of the provision in article 8. His delegation could also endorse the views expressed by the delegation of Switzerland. However, it shared the concern expressed by previous speakers regarding the difficulty of linking together property, rights and interests and the need for a definition of the concept of a State.

50. Mr. KÖCK (Holy See) supported the remarks of the representative of Denmark. State property was what was owned by the predecessor State. The problems of linking property with rights and interests could perhaps be overcome by referring in article 8 to "property, including rights and interests".

51. Mr. SHASH (Egypt) said that it was important to obtain some clarification of the various points raised before deciding whether to proceed with the discussion of article 8 under Part II or to take it up in connection with article 2 in Part I. His delegation considered the three major points of concern to be: the definition of State property; the date of succession; and the applicability or otherwise of internal law.

52. Mr. BINTOU (Zaire) said that it should be made clear whether the concept of property rights and interests included obligations.

53. Mr. BOSCO (Italy) said that in his delegation's view the concept of property should cover both tangible goods and intangibles.

54. A limited concept of property would give rise to difficulties in connection with the interpretation of article 14.

55. Mr. GUILLAUME (France) suggested that a time-limit should be set for the submission of amendments to articles 7 to 12.

56. Mr. do NASCIMENTO e SILVA (Brazil) proposed that further discussion of article 8 should be postponed until the Committee had considered the other draft articles relating to State property.

57. After a procedural discussion, the CHAIRMAN suggested that the discussion of article 8 should be suspended pending clarification by the Expert Consultant of the points so far raised. A suspension would also provide an opportunity for delegations to submit amendments. It was understood that the Committee would resume consideration of article 8 at a later date.

It was so agreed.

Article 9 (Effects of the passing of State property)

58. Mr. TÜRK (Austria) said that his delegation attached particular importance to article 9 and had submitted written comments on earlier drafts. He stressed that any solution to the problems raised by article 9 should be applied also to articles 20 and 32. Those three articles, which dealt with the three different aspects of the same problem, should be merged and included under the general provisions in Part I.

59. Mr. ECONOMIDES (Greece) endorsed that view. Articles 9, 20 and 32 were virtual repetitions of the same provision.

60. Mr. SHASH (Egypt) said that such a procedure would give his delegation some difficulties. The text had been drafted under three main headings corresponding to the three topics involved. While repetitions were bound to occur as a result, the structure had a definite logic, particularly in relation to the concept of the effects of passing, since the three articles in question all related to succession. He believed that the valuable work done by the International Law Commission should not be prejudiced.

61. Mr. GUILLAUME (France) said that the value of the work done by the International Law Commission and the Special Rapporteur in providing the Conference with a basis for its discussions, was not in question. It should nevertheless be borne in mind that the International Law Commission was composed of independent experts. The Conference, as a body of sovereign States, was fully entitled to express views on and to amend the Commission's draft.

62. The possibility of merging articles 9, 20 and 32 merited further study. On the other hand, the Conference might wish to retain the three topics under separate headings and perhaps even consider drafting an *à la carte* form of convention with States being free to accede to certain sections independently of their accession to others. His delegation had no fixed views on the matter at the present stage but believed that serious thought should be given to the general structure of the draft convention.

63. Mr. MONCEF BENOUNICHE (Algeria) said that the problems cited in respect of article 9 were bound to emerge later in connection with other articles. He believed that the structure proposed by the International Law Commission was a sound one.

64. Mr. MUCHUI (Kenya) agreed that a general decision was required as to whether the Conference wished to discuss the draft as submitted or change the presentation. His delegation's position was that the structure proposed by the International Law Commission was a useful one and should be used as the basis for discussion. The interrelationship between various articles should however be kept constantly in mind during the discussions.

65. Mr. MONNIER (Switzerland) said that the substance of the amendments proposed by delegations would have an important bearing on whether or not the proposed structure of the draft convention should be maintained. He reaffirmed the right of the Conference, as a plenipotentiary body, to make any changes in the draft before it.

66. Mr. BOSCO (Italy) said that the question of structure should be given careful thought; if a number of provisions were relocated in Part I, that part of the draft articles would become too long to be taken up at the end of the Conference.

67. Mr. do NASCIMENTO e SILVA (Brazil) said that the idea of merging articles 9, 20 and 32 was attractive in a certain sense. However, considering that such an article would constitute a general provision applicable to the whole convention, he had serious doubts as to the convenience of departing from the approach adopted, after lengthy consideration, by the International Law Commission. In his view, it would be preferable to maintain article 9 as drafted.

68. Mr. SHASH (Egypt) agreed with the previous speaker. The Conference was dealing with three different topics and it was more logical to deal with them separately under separate headings.

69. The CHAIRMAN noted that a distinction should be drawn between different types of provisions. Article 7, which concerned scope, and article 8, which was in the nature of a definition, could possibly be placed in Part I. On the other hand, article 9 and similar provisions related to specific subjects. The International Law Commission had therefore never considered placing them in Part I of the draft convention.

The meeting rose at 1.05 p.m.

2nd meeting

Wednesday, 2 March 1983, at 3.15 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1, A/CONF.117/C.1/L.2)

[Agenda item 11]

Article 9 (Effects of the passing of State property) (*continued*)

1. Mr. SUCHARIPA (Austria) said that while the text of article 9 as proposed by the International Law Commission raised a number of issues, his delegation had no objection to its content from the point of view of legal theory. In practice, however, it might give rise to some difficulties and his delegation acccordingly proposed that the article should be amended to read:

> "A succession of States has the effect that the rights of the predecessor State to State property pass to the successor State in accordance with the provisions of the articles in the present Part".[1]

2. The amendment, whose main purpose was to stress the element of continuity in the passage of property from the predecessor to the successor State, would, he hoped, facilitate discussion of draft article 9.

3. Mr. ZSCHIEDRICH (German Democratic Republic) said that his delegation had no problems with article 9 as formulated by the International Law Commission since it reflected well-known customary rules of international law.

4. He agreed with the view, expressed by the representative of Brazil and others at the previous meeting, that it would be best to consider the Commission's draft article by article. He would not object if articles 7, 18 and 30 were discussed in conjunction with article 1 but thought that the question of the scope of the articles might best be considered by the Drafting Committee.

5. Mr. RASSOL"KO (Byelorussian Soviet Socialist Republic) said that draft article 9 was acceptable to his delegation, for its wording was consistent with the aims of the proposed international instrument.

6. He added that it seemed to have been the general consensus at the previous meeting that the articles of general application should be discussed first and that the discussion should follow the order of the articles as submitted by the International Law Commission.

7. Mr. GUILLAUME (France) said that article 9 as drafted referred to the "extinction" and the "arising" of rights, which tended to imply some discontinuity. His delegation preferred the wording suggested by the representative of Austria, which preserved the notion of transfer or continuity of rights and which corresponded more closely to the practice of international law. It was important to avoid any suggestion that there could be some kind of hiatus in the process of transfer of rights.

8. Mr. OESTERHELT (Federal Republic of Germany) said that the commentary to article 9 affirmed that, despite the break in continuity implied by the extinction and the arising of rights, the two events were to be regarded as simultaneous. In his delegation's view, however, a further clarification was required. Article 9 must not abrogate the principle that property rights and interests passed in conjunction with the obligations attached to those rights: *res transit cum onere suo*. Articles 6, 12 and 34 clearly supported that view. Similarly, property rights and interests could only pass to the extent that the predecessor State possessed such rights: *nemo plus juris transferre potest quam ipse habet*. The text eventually adopted should reflect those principles and his delegation regarded the Austrian proposal as an improvement in that respect.

9. Mr. NATHAN (Israel) said that article 9 failed to deal with the question whether the State property that was to pass to the successor State had been lawfully acquired by the predecessor State. There had been cases in which property had been acquired by a predecessor State in accordance with its internal law but as a result of measures taken in violation of the rules of international law and the principles of human rights.

10. It could hardly be the intention of the Commission that title to property that had been acquired wrongfully could pass to the successor State. His delegation believed that the article should specify that the passing of property under the article should not be deemed to confer a valid title to property wrongfully acquired by the predecessor State.

11. Mr. MONCEF BENOUNICHE (Algeria) said that, during the debate in the Sixth Committee of the General Assembly, delegations of newly independent countries had pointed out that the concept of the "extinction" and the "arising" of rights did not do full justice to States which had for a time been administered by a colonial Power. What article 9 should stress was that in such cases there was not an "arising" of rights but rather a "renaissance" of rights.

12. He referred to the statements made by several representatives to the effect that the passage of rights also entailed the passage of obligations: that was not his delegation's view, nor did it appear to be that of the International Law Commission, which had concerned itself with the assets involved in the passing of State property and not with the liabilities, charges and obligations attaching to property to which a State succeeded. His delegation would return to the question after hearing the clarifications of the Expert Consultant.

13. Mr. EDWARDS (United Kingdom) said that article 9 contained only a description of what necessarily happened as a result of a succession of States which

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[1] Subsequently issued under the symbol A/CONF.117/C.1/L.2.

took place by virtue of the articles that followed. That had led his delegation to wonder whether the draft article was necessary at all. However, having heard the comments of other delegations, his delegation would not oppose retention of the article, provided that the point made earlier by the French delegation concerning continuity between the extinction and the arising of transferred rights was retained. The text proposed by the Austrian delegation met that need and his delegation therefore supported it.

14. Mr. DALTON (United States of America) said that the wording proposed by the representative of Austria did not conflict with the purport of the draft as a whole and would help to clarify the issue to the national authorities which would be involved.

15. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation had no objection to the text of article 9 as submitted by the International Law Commission; it would reserve its position on the Austrian amendment pending further study. At first glance, it was apparent that the amendment used new terminology. The articles following article 9 would refer to the "passing of State property" to the successor State, whereas the amendment spoke of the passing of rights to State property. While noting that the term "passing" as used in article 9 was not absolutely precise, his delegation felt that the Commission's text was on the whole preferable to the Austrian amendment.

16. Mr. SHASH (Egypt) said that his delegation preferred the text as submitted by the International Law Commission because of the vagueness of the term "pass" in the Austrian amendment. The term might be construed as allowing for a certain lapse of time. However, the Commission's wording was not wholly satisfactory either in that respect.

17. Mr. SUCHARITKUL (Thailand) said that the draft article 9 prepared by the International Law Commission did not answer the question whether the property rights extinguished and those arising upon a succession of States were identical. The Austrian amendment seemed to have the merit of settling the question, but more time was needed to consider its implications.

18. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation welcomed the Austrian amendment, which was both clearer and simpler than the original draft.

19. Mr. MONNIER (Switzerland) noted that the International Law Commission's draft divided the process of passing of rights into two separate phases —that of the extinction of the rights of the predecessor State and that of the arising of the rights of the successor State. That was one of the possible theoretical definitions of the process. The merit of the Austrian amendment was that it clearly showed that there was a passing of rights, that was to say a change of ownership with continuity of rights. It was important that the rule should clearly state that principle of passing of rights.

20. Mr. LAMAMRA (Algeria) drew attention to a possible source of confusion in that the Austrian amendment spoke of "rights to State property" while draft article 8 defined State property as meaning "property, rights and interests". A second and more serious objection to the Austrian amendment was that it spoke of the passing of rights to State property and not of that of the property itself. The experience of many States had shown that the enjoyment of a right was not necessarily synonymous with the exercise of that right.

21. Mr. SAINT-MARTIN (Canada), Mr. BOSCO (Italy) and Mr. de VIDTS (Belgium) expressed a preference for the Austrian amendment as being clearer and simpler than the original draft.

22. Mr. MURAKAMI (Japan) said that there was no difference of substance between the original text and the Austrian amendment, although the latter was clearer.

23. Mr. ECONOMIDES (Greece) considered that there was no difference of substance between the two texts. What mattered was the idea of continuity and that was preserved in both cases. However, the Austrian amendment was preferable on account of its simplicity and because it answered the question raised by the representative of Thailand as to the identity of the rights that were extinguished with those that arose as a result of a succession of States. So far as the point just raised by the representative of Algeria was concerned, he suggested that a reference to the definition of State property contained in draft article 8 might be added to the Austrian text.

24. Mr. OWOEYE (Nigeria), while agreeing that the language of the Austrian amendment was clearer, felt that it was important to maintain the notion of the extinction of the rights of the predecessor State.

25. Mr. ROSENSTOCK (United States of America) said that the Austrian amendment had the merit of stating in simpler terms what was the effect of a succession of States on property of the predecessor State. The notions of extinction and arising of rights were somewhat metaphysical in nature; he did not believe that anything would be lost by abandoning them. As regards the proposed reference to draft article 8, he remarked that a process of passage of rights at the end of which the successor had more rights than the predecessor was, in any case, unimaginable.

26. Mr. MUCHUI (Kenya) said that the Austrian amendment was only superficially clearer than the Commission's text. Because of the importance of the concept of succession, the Commission had felt the need to state expressly that succession entailed the extinction of the rights of the predecessor State and the arising of the rights of the successor State. His delegation was of the view that to incorporate that notion in the future convention could do no harm and, if anything, would add to the clarity of the whole. He greatly preferred the Commission's text.

27. Mr. SUCHARIPA (Austria), replying to the suggestion made by the Greek representative, said that he would have no objection to adding a reference to draft article 8 in the text of his amendment. Replying to the point raised by the Nigerian representative, he said that he would be prepared to add a phrase such as ". . . thus entailing the extinction of the rights of the predecessor State" if it was considered necessary.

28. Ms. LUHULIMA (Indonesia) associated herself with the views expressed by the Nigerian represen-

tative and expressed a preference for the Commission's text.

29. Mr. LAMAMRA (Algeria) said that the Commission's text brought out more clearly that a succession of States entailed not only a transfer of sovereignty but a substitution of sovereignty through the process of extinction and arising of rights.

30. Mr. GUILLAUME (France) shared the United States representative's view that the point under discussion was a metaphysical one and therefore of rather limited interest. The Austrian proposal avoided it altogether and was to be welcomed for that reason.

31. The CHAIRMAN suggested that further consideration of article 9 should be deferred until the following meeting.

It was so decided.

Article 10 (Date of the passing of State property)

32. Mrs. BOKOR-SZEGÖ (Hungary), referring to the expression "unless otherwise agreed or decided" at the beginning of the article, considered that the words "or decided" should be deleted. It was difficult to see what body could take a decision if no agreement existed between the parties. Even the International Court of Justice could not adjudicate in a case without the agreement of the parties.

33. Mr. NATHAN (Israel) said that the difficulty might be overcome by replacing the word "decided" by the word "determined".

34. Mr. ECONOMIDES (Greece) agreed with the Hungarian representative that a new form of words appeared to be needed at the beginning of the article. In addition, he suggested that draft article 10 might be merged with draft articles 21 and 33 dealing with the date of the passing of State archives and with that of the passing of State debts, respectively.

35. Mr. LEHMANN (Denmark) agreed. In order to avoid overloading the substantive part of the convention, draft articles 10, 21 and 33 might be merged into one and transferred to the "General provisions", possibly under draft article 2, paragraph 1(*d*).

36. Mr. MONCEF BENOUNICHE (Algeria) said that by using the phrase "unless otherwise agreed or decided" the International Law Commission had tried to cover every eventuality that might arise. The possibility that an international body might make decisions concerning the passing of State property was not merely hypothetical: the United Nations Council for Namibia had made such a decision. In his view, the article could be made clearer by the addition of some explanatory words but the words "or decided" should not be deleted.

37. Mr. GUILLAUME (France) said that the point raised by the representative of Hungary deserved to be taken into consideration. He thought that the Israeli representative's suggestion might be referred to the Drafting Committee. He reserved his delegation's position on draft article 10 as a whole, pending the consideration of draft article 2, paragraph 1.

38. Mr. MAAS GEESTERANUS (Netherlands) said that he found the arguments put forward by the representatives of Algeria convincing. A decision taken by an international court did not always have to be based on acceptance of its jurisdiction by direct and specific agreement between two States: quite possibly the court's jurisdiction had been accepted in a more general way. That situation would not be covered by a reference to agreement alone in article 10, and the Commission's original wording should therefore be retained.

39. Mr. BROWN (Australia) endorsed the views of the representative of France. Although he had no difficulty with the present wording of the article, he noted that it was tied to the definition of succession of States in article 2, paragraph 1(*a*) and he therefore wished to reserve his delegation's position on draft article 10 until its doubts with regard to that paragraph had been resolved.

40. Mr. SHASH (Egypt) said that the expression "unless otherwise agreed or decided" in article 10 was too vague. The intended meaning should be spelt out more clearly and perhaps supplemented by some such phrase as "in conformity with the Charter of the United Nations".

41. Mr. MONNIER (Switzerland) said that, as far as his delegation was concerned, the phrase under consideration was acceptable as it stood. The words "or decided" were useful, for they covered not only possible rulings by a judicial body but also, as the representative of Algeria had pointed out, decisions taken by some other international body. In view of the close link between article 10 and article 2 with regard to the date of the passing, his delegation did not want to take a definitive position until article 2 had been considered, because although the date in question was adequate in respect of treaties, it was not necessarily so in respect of other matters.

42. Mr. do NASCIMENTO e SILVA (Brazil) said that the arguments put forward by the representative of Algeria had convinced him that the words "or decided" should stand. It was important to cover cases in which the predecessor and successor States were unable to reach agreement and in which, therefore, a decision had to be taken in some other way. The wording of the Commission's draft should therefore be retained.

43. Mr. GROZA (Romania) said that his delegation approved in principle of the wording used in the Commission's draft article. It was primarily the responsibility of the two States concerned to settle the question of the date of passing of State property by agreement, but the possibility of a decision in one form or another should not be precluded.

44. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that her delegation considered that the draft article was satisfactory as it stood, without amendment. The future convention should cover all conceivable situations and hence the expression "unless otherwise agreed or decided" should be retained.

45. Mr. RASUL (Pakistan) said that he did not regard the words "or decided" as necessary or applicable in the context of article 10.

46. Mr. ROSENSTOCK (United States of America) observed that, although the words "or decided" might

be regarded as useful in that they would cover a decision taken by a body such as the Security Council, a reference to agreement alone was probably sufficient, since even a decision by a third party would imply the prior consent of the States concerned to be bound by that decision. In any event, he regarded the question as one of mere form which could be left to the Drafting Committee.

47. Mr. SUCHARITKUL (Thailand) noted that the phrase "unless otherwise agreed or decided" was repeated in identical form in articles 21 and 33, which dealt with the passing of State archives and State debts respectively. The formula was useful in that it covered a multiplicity of potential circumstances in which the passing of property was deferred beyond the date of succession of States, including agreements involving a State or States other than the predecessor and successor States, decisions by competent national or international organs, not necessarily judicial in character, and even a unilateral decision such as had been applied by Malaysia at the time of the creation of the State of Singapore.

48. Mrs. BOKOR-SZEGÖ (Hungary) said that it seemed clear that in drafting the article the Commission had not in fact envisaged all possible cases, since the commentary referred only to a ruling by an international court. She proposed that the Committee should defer further debate on the particular point until it could benefit from the opinion of Judge Bedjaoui of the International Court of Justice in his capacity as Expert Consultant.

It was so decided.

Article 11 (Passing of State property without compensation)

49. Mrs. BOKOR-SZEGÖ (Hungary) observed that the difficulty affecting article 10 also applied to article 11, since the phrase "unless otherwise agreed or decided" was used in an identical way.

50. The CHAIRMAN noted that the decision which would eventually be taken on the use of that phrase in the first article in which it appeared would be valid for all other articles in which it recurred.

51. Mr. GUILLAUME (France) said that he was not clear as to the value of the proviso "subject to the provisions of the articles in the present Part", and found paragraph (3) of the Commission's commentary less than helpful in defining its scope. It was already made abundantly plain in several other contexts of the draft articles that third States were excluded from the effects of a succession.

52. He could not agree with the Commission's assertion that the main provision of article 11 reflected established practice. While the article was in substance acceptable, it should be recognized as a change in existing international law.

53. Mr. SHASH (Egypt) said that draft article 11 was acceptable to his delegation, subject to the reservation expressed earlier regarding the phrase "unless otherwise agreed or decided".

54. Mr. BROWN (Australia) said that his delegation endorsed article 11 as it stood.

55. The CHAIRMAN noted that the discussion of article 11 would be continued at the following meeting.

The meeting rose at 5.45 p.m.

3rd meeting

Thursday, 3 March 1983, at 10.40 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 11 (Passing of State property without compensation) (*continued*)

1. Mr. DI BIASE (Uruguay), referring to the written comments submitted by his Government as reproduced in document A/37/454/Add.1, said that while Uruguay appreciated the intent of article 11, it felt that the provision could be either superfluous or excessive. If confined to making explicit the implicit intent of the States, based on practice, the provision would be unnecessary. On the other hand, the provision could go too far if the interpretation of the will of the parties, which it derived from their silence, was not correct. Thus, if some item were accidentally omitted from a list of State property in respect of which compensation was to be paid by the successor State, that State would, under the proposed article, owe no compensation to the predecessor State for that item of property. That obviously was not consistent with the will of the parties.

2. The effect of the proposed provision was thus to sanction the principle of non-compensation in the matter of succession to State property. His delegation knew of no legal system that sanctioned such a principle.

3. For those reasons, his delegation proposed that article 11 should be deleted.

4. Mr. DJORDJEVIĆ (Yugoslavia) said that article 11 enunciated the fundamental principle that the passage of State property to a successor State should be without compensation. The provision, which was based on clearly established practice, was particularly important for newly independent States. At the current stage of development of international law, article 11 repre-

sented the only option. The phrase "unless otherwise agreed or decided" left open the possibility of derogating from the rule laid down in the article. His delegation believed that the article should be approved by the Conference in its present form.

5. Mr. HAWAS (Egypt) agreed with the representative of Yugoslavia but stressed the importance of defining precisely what was meant by the words "agreed or decided".

6. Mrs. THAKORE (India) said that, even if article 11 did state the obvious, it laid down a principle of cardinal importance, especially for newly independent countries, that was widely confirmed by practice. The phrase "unless otherwise agreed or decided" certainly provided the necessary flexibility and her delegation even wondered whether it did not unduly weaken the provision. She supported the retention of article 11 and noted that the provision had been widely supported by delegations in the Sixth Committee of the General Assembly.

7. Mr. LAMAMRA (Algeria) said that article 11 made it clear that, while specific arrangements could be decided by the parties concerned or by an appropriate body, the rule was that the passing of State property from the predecessor to the successor State should take place without compensation. His delegation therefore considered retention of the article essential.

8. Mr. do NASCIMENTO e SILVA (Brazil) believed that article 11 should be retained. He stressed that it was a residuary provision, subject both to the other articles in Part II and to any decision or agreement to the contrary which could be taken either by the parties concerned or by another body. The rights of the predecessor State were thus adequately protected. Moreover, that State was usually in the stronger position and would take the necessary precautions in order to safeguard its position.

9. Mr. MNJAMA (Kenya) said that, as the International Law Commission had pointed out in paragraph (1) of its commentary on article 11 (see A/CONF.117/4), that article was a necessary complement to article 9. The provision enunciated an important principle, based on practice, but provided nevertheless for exceptional cases where the passage of State property was not without compensation. His delegation fully supported the retention of article 11.

10. Mr. MIKULKA (Czechoslovakia) supported the retention of article 11 because the provision enshrined the important principle of non-compensation in the passing of State property yet also provided sufficient latitude for derogation from that rule. While specific arrangements could be made even if not expressly provided for in the text, it would be preferable to make explicit reference to them.

11. Mr. KEROUAZ (Algeria) said he was glad to note that most speakers favoured maintaining article 11.

12. As pointed out in the commentary, there were only a few exceptions to the rule that the passage of State property should take place without compensation. Even in those cases, the exception had been applied with only limited effect: thus, in the Treaty of Saint-Germain-en-Laye, the exception had been valid only for certain types of property. The few exceptions cited, which were of limited applicability, were thus no obstacle to the recognition of a well-established general rule.

13. Even when there was no conventional norm to regulate the cession of property, there had been a natural tendency for payment not to be made. That was illustrated by the special arrangements made with a number of countries and territories which had gained independence after the Second World War.

14. The rule of the passing of State property from the predecessor to the successor State without compensation had certainly been viewed by the General Assembly as being not subject to appeal: the General Assembly had established a special tribunal to implement the provisions of General Assembly resolution 388 (V) of 15 December 1950.

15. Article 11 thus enshrined a rule, which had been virtually the norm for several decades, whereby the successor State could appropriate freely all State property of the predecessor State—including administrative assets—situated in the territory over which the successor State assumes jurisdiction.

16. The fact that there were two clauses in article 11 which could attach certain conditions to that rule did not present his delegation with any problems. His delegation therefore firmly supported the approval of article 11 in its present form.

17. Mr. KÖCK (Holy See) said that, while his delegation appreciated the points raised by the representative of Uruguay, it believed that article 11 should be retained. His delegation had no problems with the use of the word "decided" in the text, which it interpreted as meaning that, if a dispute arose between a predecessor State and a successor State as to whether or not compensation was due, the case might go to an international tribunal and the international tribunal could rule on the matter.

18. Mr. PHAM GIANG (Viet Nam) said that article 11 reflected faithfully the practice in respect of the passing of State property to newly independent States. It formed an inseparable whole with article 9 and the present wording should be retained.

19. Mr. OWOEYE (Nigeria) was also in favour of retaining the present text of article 11. The formulation was sufficiently flexible. He was convinced it was not the intention of the Conference that newly independent States should have to face paying for some of the State property passed to them.

20. Mr. TORNARITIS (Cyprus) also favoured the retention of article 11 in its present form. It reflected current international practice and the provision "unless otherwise agreed or decided" covered the many cases in which the predecessor State took some compensation or retained some rights. For example, under the treaty concerning the establishment of the Republic of Cyprus, the United Kingdom had retained certain rights.

21. Mr. SUCHARITKUL (Thailand) supported article 11 as enunciating a general, but not an absolute, principle. In practice there had been many cases, particularly in Asia, in which compensation had been paid

for the passing of State property, with the consent of both States concerned. Such had been the case with regard to the final settlement agreed between Malaysia and Singapore in respect of Malay Airways. The formulation of article 11 would meet the requirements of modern States.

22. Mrs. OLIVEROS (Argentina) said that the passing of State property must be subject to rules, and the principle of non-compensation, which had been applied repeatedly throughout history, should be incorporated into the convention. Article 11 was sufficiently broad in scope to allow for other arrangements to be agreed upon. Her delegation was, however, concerned that the concept of "decision" should be clearly defined, since it might be interpreted as covering a judgment by a superior authority which was not in accord with the wishes of one or other of the States concerned. It must not be so construed.

23. Mr. ECONOMIDES (Greece) said that article 11 would be a useful guide for States, provided it was understood that its application was subject to the free will of the parties concerned.

24. The text of article 11 should clearly be read in conjunction with article 9. He was awaiting the comments of the Expert Consultant on the opening phrase of article 11. The distinction between the word "agreed" and "decided" should be made clearer.

25. Mr. HAWAS (Egypt) said that the phrase "unless otherwise agreed or decided", which occurred in both article 10 and article 11, was ambiguous and would cause difficulty in application. The Malay Airways case quoted by the Thai representative was a perfect example of what might happen. There had been an initial decision by the Malaysian Government to transfer part of the property with compensation. When the Government of Singapore had come into existence, a final agreement in that sense had ultimately been reached. It should be made clear that the decision should be made by an appropriate international body and not taken unilaterally by the government holding power at the date of the succession of States. It was also clear that an agreement reached between the occupying power and the local authorities of a colonial country would be invalid. The provision should be amended to read ". . . agreed by the States concerned or decided by an appropriate international body, . . ."[1]

26. Mr. ROSPIGLIOSI (Peru) said that it was standard practice in drafting legal texts to state the basic principle first and any exceptions to that principle second. He therefore suggested that the order in article 11 should be reversed so that it would read:

> "The passing of State property from the predecessor State to the successor State shall take place without compensation, subject to the provisions of the articles in the present Part and unless otherwise agreed or decided."

27. Mr. RASUL (Pakistan) said that, according to article 4, the proposed convention was not applicable retroactively. It was unlikely to enter into force before 1990 at the earliest and by that date there would be very few cases of newly independent States resulting from decolonization. The most usual form of succession of States would be separation of part or parts of a State. That fact should be borne in mind in drafting the convention. He shared the views which had been expressed by the French representative at the Committee's second meeting and by the Greek representative at the current meeting. The opening phrase of article 11 was unclear and complicated and should be reviewed by the Drafting Committee.

28. Mr. LOZADA (Philippines) supported the retention of article 11, including the phrase "unless otherwise agreed or decided" which would be necessary in the event of any dispute. However, he agreed with the Egyptian representative that it should be stated who was to take a decision in the event of a disagreement.

29. Mr. OESTERHELT (Federal Republic of Germany) was in favour of retaining the present draft of article 11 which was oriented to future problems. He shared the views which had been expressed by the French representative regarding existing international law. With regard to the exact meaning of the opening phrase of article 11, he referred to article 16, paragraph 3, and article 17, paragraph 2, which provided for equitable compensation in certain cases.

30. Mr. DI BIASE (Uruguay) thanked delegations for their useful comments and particularly for their proposals to modify the present text in order to achieve greater clarity.

31. Mr. MNJAMA (Kenya) said that his delegation favoured retaining article 11, subject to clarification of the phrase "agreed or decided". Experience showed that the predecessor State had the upper hand at the time of succession.

32. Mr. GUILLAUME (France) accepted the gloss of the representative of the Federal Republic of Germany on the opening phrase of article 11, which might well be acceptable in its present form. It would be applicable among States parties to the Convention. There would be a great variety of situations, according to the type of succession of States and the nature of the property concerned. Bilateral agreements were virtually essential but, in their default, the text of article 11 could be applied.

33. Mr. A. BIN DAAR (United Arab Emirates) said that the provision "unless otherwise agreed or decided" gave an undue advantage to a colonialist Power and should be deleted. Article 11 should state unambiguously that the passing of State property should take place without compensation.

34. Ms. LUHULIMA (Indonesia) said that her delegation was in favour of retaining article 11, including the words "unless otherwise agreed". It reserved the right to refer to the matter again in connection with the word "decided", after hearing the comments of the Expert Consultant.

35. The CHAIRMAN, summing up, said that the Committee had succeeded in dealing with most of the substantial aspects of the article and its wording. Since the only outstanding questions were of a drafting nature and did not affect the substance, he proposed that article 11 should be referred to the Drafting Committee together with any formal amendments that might be submitted.

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[1] Subsequently issued under the symbol A/CONF.117/C.1/L.6.

36. Mr. do NASCIMENTO e SILVA (Brazil) supported the Chairman's proposal. The amendments suggested in the course of discussion had been most useful and the representative of the Federal Republic of Germany had aptly clarified the first phrase of the draft article. However, in the absence of written amendments there remained only one text and he personally favoured its referral to the Drafting Committee forthwith.

37. Mr. SUCHARIPA (Austria) also supported the Chairman's proposal.

38. Mr. HAWAS (Egypt) said that he wished his delegation's oral amendment to be considered a formal one.

39. Mr. JOMARD (Iraq) asked whether it would be possible for a document containing all the amendments proposed in the course of the discussion to be circulated for consideration by the Committee of the Whole, which could then reduce them in number before referring them to the Drafting Committee. That would facilitate the latter's work.

40. Mr. MONNIER (Switzerland) drew attention to rule 47, paragraph 2 of the rules of procedure according to which the Drafting Committee was to review the drafting of all texts adopted. In the light of Egypt's formally proposed amendment the text of article 11 could not be regarded as adopted.

41. The CHAIRMAN agreed that the situation had been altered by the Egyptian delegation's latest statement. A decision to refer the text to the Drafting Committee could be taken only after due consideration of all formal amendments. He therefore withdrew his proposal and hoped that a written version of Egypt's proposed amendment would be available for consideration at the next meeting.

42. Mr. KÖCK (Holy See) supported that course of action.

43. The CHAIRMAN invited the Committee to begin consideration of article 12.

Article 12 (Absence of effect of a succession of States on the property of a third State)

44. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation welcomed the useful clarification contained in the draft article. The latter was declaratory in nature and restated a principle of general international law, from which arguments *a contrario* could not be drawn. There was good reason to have that restatement in the draft, since the case it purported to regulate was one in which arguments were most likely to arise. His delegation had already drawn attention in the Sixth Committee of the General Assembly to the close relationship between article 12 and article 34. The guiding principle underlying article 12 was basic in its view and it therefore wished to comment at a later stage on certain aspects of article 34.

45. Mr. SUCHARIPA (Austria) said that his delegation approved of article 12 which it considered to be a very valuable restatement of a rule of international law specifically for the type of case most likely to occur.

46. Mr. ALSTER (Israel) endorsed the view of some members of the International Law Commission reflected in paragraph (5) of its commentary on article 12, that that article 12 was unnecessary. Article 8 stated that the determination of State property as such was to be in accordance with the internal law of the predecessor State. Although the formulation of article 8 had not yet been decided, most delegations appeared to approve the substance of that provision. The logical conclusion therefore was that the question of State property of third States was quite outside the scope of the present Convention and consequently would not require further clarification, which did not mean that the provision in article 12 did not correctly reflect the relevant rules of international law. On that point his delegation agreed with the French and Austrian delegations in particular. The same observation could also be made in respect of draft article 23. As the draft articles in Parts II and III dealt basically with the relations between the predecessor State and the successor State, property and archives of third parties were outside their scope. That did not apply, however, to Part IV, which dealt principally with the relations between the predecessor State and the successor State in respect of creditor third parties to whom State debts were owed. In that context the rights of third parties clearly had to be protected, whereas in the context of State property and archives the question of protection did not arise.

47. Mr. FREELAND (United Kingdom) said that his delegation found the text of article 12 as proposed by the International Law Commission acceptable, although initially it had questioned the need to state expressly a principle that seemed so obvious, namely that a succession of States could not affect the property of third States. On reflection, however, it understood why the Commission had deemed it desirable to say something specifically about a case where the question could arise in practice, namely where the property of a third State was situated in the territory of the predecessor State. As his delegation understood it, the same principle applied, and perhaps with even greater force, to the property of a third State situated elsewhere than in the territory of a predecessor State.

48. Mr. ECONOMIDES (Greece) said that article 12, which embodied a general principle of international law, was a useful safeguard clause analogous to the provisions contained in articles 5 and 6. Article 12 related to State property situated in the territory of the predecessor State and not to that situated in any third State.

49. Mr. ZSCHIEDRICH (German Democratic Republic) said that his delegation supported the clarification provided by article 12 to the effect that a succession of States could not as such affect the legal status of the State property of third States which was situated in the territory affected by the succession. The article codified what was probably an undisputed rule of customary law. His delegation welcomed the clear statement that the creation of its own legal system by the successor State would not affect or prejudice the legal status of the State property owned by a third State. That concept stemmed from the basic international principles of sovereign equality of States, non-interference in internal affairs and the duty to co-operate peacefully in matters concerning State property. Article 12 also reiterated that the immunity of State property existed by

virtue of the generally recognized norms of international law and that events of State succession did not affect it. It also signified in terms of international law that the inviolability of State property constituted the material basis upon which a third State could exercise sovereign powers in the host country.

50. Article 12 was important for another reason. Since a considerable time might elapse between the date of State succession and the international recognition of the new State, it was necessary to provide clearly that State property must remain inviolable, whether the States concerned had already recognized each other or not.

51. Problems might arise in the course of discussion with regard to the relationship between the definition of State property, as contained in article 8, and the concept of State property of a third State as dealt with in article 12. In his delegation's view the definition as such was applicable to both situations, the main difference being the legal fate of the different types of State property. Whereas under the conditions set forth in articles 9 to 11 the State property of the predecessor State passed automatically to the successor State without compensation, and the latter State, on the basis of its sovereignty, had the right to use it and even to change its legal status, the same did not apply to State property owned by a third State, covered by article 12.

52. Whether or not a State succession had occurred, the third State retained ownership of its property, just as its claim to immunity with regard to such property would remain unchanged.

53. Mr. SUCHARITKUL (Thailand) said that his Government attached great importance to the content of article 12 and to the principles it embodied. Having been a third State in many cases of State succession, Thailand considered it of the greatest importance to enunciate in the clearest possible terms the general principle that the property of a third State situated in the territory of the predecessor State at the time of State succession was not affected by such succession. His Government approved of the qualification introduced at the end of the article by the use of the words "according to the internal law of the predecessor State".

54. He was not prepared to go further than the question of title with respect to the property of a third State. His delegation largely agreed with the remarks of the United Kingdom representative, but felt, with reference to the observation of the representative of the Federal Republic of Germany, that matters other than the actual ownership of State property of the third State might be affected by State succession. An obvious example was the Thai embassy premises in Saigon, now Ho Chi Minhville, which were no longer regarded as an embassy. They were the property of Thailand and recognized as such by the Government of Viet Nam, but diplomatic protection and inviolability were no longer accorded, the Thai embassy having moved to Hanoi. The text of the article should therefore be retained in order to maintain respect for property, the rights to which were unafffected, but other interests beyond those rights would not be subject to regulation by the draft article.

55. Mr. MONNIER (Switzerland) said it was not surprising that some members of the Commission should have questioned the need to include article 12 in the draft convention, since it was a general principle of international law. However, a reminder of the rule was not entirely superfluous. The article referred to the property of a third State situated in a predecessor State, the most frequent case which might arise. However on the basis of a formal interpretation and *a contrario* it should not be concluded that the property of a third State situated elsewhere than in the territory of the predecessor State might be affected by succession of States. The scope of the rule should be quite clear, namely that the succession of States could not have any effect on the property of the third State, wherever that property was located. Referring to the Thai representative's statement, he said that article 12 could relate only to the ownership of property and not, as the representative of the German Democratic Republic had suggested, to other questions such as inviolability or immunity of State property.

56. Mr. MOCHI ONORY DI SALUZZO (Italy) fully supported the views expressed by the representative of Switzerland. The article was actually declaratory of the general norm of international law that a succession of States had no effect on the property of third States, wherever in the territory that property might be situated, and whether that territory remained with the predecessor State or passed to the successor State. As far as ownership by the third State was concerned, and for qualification for such a right, he thought that it was necessary to make reference to the internal law of the predecessor State.

57. Mr. MURAKAMI (Japan) supported the views expressed by the representative of the Federal Republic of Germany and others concerning the declaratory nature of article 12. The article had a possible implication for articles 33 and 34 and his delegation might refer to the subject again when article 33 was discussed.

58. Mr. RASUL (Pakistan) said that his delegation had no difficulty in accepting the principle enunciated in the article since it understood it to be of a declaratory nature. The drafting of the article might however be improved and, without in any way wishing to make a formal proposal, but as a possible improvement for consideration by the Drafting Committee alone, he suggested that the text might be reworded as follows: "The succession of States shall not as such affect State property of a third State situated in the territory of the predecessor State at the time of succession of States or at the date of succession of States".

59. Mr. BROWN (Australia) said that his delegation found the drafting of article 12 clear and acceptable and a correct statement of customary international law.

60. Mr. MAAS GEESTERANUS (Netherlands) pointed out that, if the amendment suggested by the representative of Pakistan was approved, article 8 would have to be similarly amended in order to bring it into line with article 12.

The meeting rose at 1 p.m.

4th meeting

Thursday, 3 March 1983, at 3.05 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 *(continued)* (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 12 (Absence of effect of a succession of States on the property of a third State) *(continued)*

1. Mr. MIKULKA (Czechoslovakia) said that the Special Rapporteur's thirteenth report[1] and the ideas put forward in the debate of the previous meeting had convinced him of the value of including a provision of the type of article 12. He continued, however, to have difficulty in accepting the reference to the internal law of the predecessor State as the criterion to be used in defining the property of a third State. Although such a criterion might be acceptable in determining which property was owned by the predecessor State as opposed to private persons, it was not necessarily appropriate with regard to the position of a third State. It would be better to avoid any mention of the internal law of the predecessor State and to reduce the article to a more general formula, such as "a succession of States shall not as such affect the property, rights and interests of a third State".

2. Mr. MUCHUI (Kenya) noted that article 12 merely restated a fully accepted norm of international law and as such was not strictly necessary. Indeed, it seemed to be stretching the context of the draft articles as a whole, whose main concern was the relationship, in a case of succession, between the predecessor and successor States, to introduce a provision concerning the treatment of property of third States in such an event. However, although his delegation would be happy to see the article removed, he would not formally propose that it should be deleted, in deference to the general feeling that the provision was important.

3. As far as the reference to the internal law of the predecessor State was concerned, he agreed with the representative of Czechoslovakia that it was not necessary and possibly not appropriate to specify that that law was the criterion for determining what was the property of a third State. The article would be fully adequate if it simply stated that the property of a third State was not affected by a succession of States. His delegation continued to have similar reservations with regard to the corresponding reference in article 8 and looked forward to hearing the opinion of the Expert Consultant.

4. Mr. MONCEF BENOUNICHE (Algeria) said that the reference to the internal law of the predecessor State was both self-evident and very important. It was vital that the future convention should establish a criterion for distinguishing that property which passed to the successor State from that which did not, and the only existing usable criterion was that of ownership as established by the internal law of the predecessor State.

5. Mr. de VIDTS (Belgium) said that his delegation welcomed article 12. It was obvious that in international law a succession of States could not affect the position of a third State. He understood that delegations might have some difficulty with the notion of determining a third State's property according to the internal law of the predecessor State; yet it was plain that if a third State had acquired State property in the territory of the predecessor State before the succession, that ownership must perforce be established by the predecessor State's internal law. Nevertheless, it would be possible to delete that part of the article without detriment to its scope or clarity.

6. Mr. GUILLAUME (France) said that, although the article would not be vital to a future convention, his delegation had no difficulty in accepting it, while noting the limitations on the application of a general principle of international law to the special case in question. His delegation would be equally ready to accept a more general formula of the type recommended by the representative of Czechoslovakia.

7. Mr. do NASCIMENTO e SILVA (Brazil) said that, in his view, the article as it stood was satisfactory and none of the suggestions made so far represented any improvement. Even if the reference to the internal law of the predecessor State were to be deleted, cases would inevitably arise in the future in which that internal law would automatically have to be applied, since it represented the only usable criterion. Thus the reference, although not indispensable, was useful in that it would avert controversy in the future.

8. Those who continued to have doubts regarding the status of the new State in that context might refer to paragraph (2) of the Commission's commentary on article 12, which made it quite clear that the successor State's full sovereignty would be unaffected.

9. The formula "property, rights and interests", about which reservations had at times been expressed, had been selected by the International Law Commission after lengthy discussion as covering all potential situations and corresponding to the terminology used in many international treaties.

10. Mr. LAMAMRA (United Nations Council for Namibia) said that, in the Council's view, article 12 was basically sound and reflected a clear and widely accepted norm. The inclusion of the words "as such" was particularly significant in that, as was indicated in paragraph (2) of the Commission's commentary, it anticipated the possibility of other juridical situations involving such property, rights and interests in relation to the rules of other branches of international law. Taking

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[1] *Yearbook of the International Law Commission, 1981*, vol. II, Part One, doc. A/CN.4/345 and Add.1-3.

the case of Namibia as an example, he said it was clear that article 12 could not prejudice the right of an independent Namibian Government to take whatever measures it deemed appropriate to establish its permanent sovereignty over its natural resources and to preserve the fundamental economic equilibrium of the country. An independent Namibia would also be entitled to draw the legal consequences of the presence on its territory of property, rights and interests belonging to third States, for a third State's ownership of property, rights and interests in Namibia was not incompatible with the letter or spirit of Council Decree No. 1 for the protection of the Natural Resources of Namibia.[2]

11. Mr. KÖCK (Holy See) referred to the footnote in paragraph (4) of the Commission's commentary on article 12 to the effect that the words "according to the internal law of the predecessor State" had been taken from article 8. He felt that the two contexts were in fact quite different, for whereas article 8 dealt with the distinction between State property and privately-held property, article 12 sought to distinguish the State property held by each of two States. He was not sure that in the latter case it was justifiable to use the internal law of only one of those two States as the exclusive criterion. In view of the conflicting views which had been expressed on that point, he supported the proposal made by the representative of Czechoslovakia that that particular phrase should be eliminated and a new formula sought.

12. Mr. JOMARD (Iraq) said that the comments made by the representative of the Holy See were very pertinent. It would be useful to make perfectly clear what was meant by "State" property, since in international law the term "State" covered the government, the population and all other constituent elements of a State, while the more usual definition of State property in domestic law covered that property which was held by the public sector, a notion which differed in internal law and practice from one State to another.

13. Mr. SUCHARITKUL (Thailand) said that article 12 was not concerned fundamentally with defining the nature of State property as distinct from private property but with distinguishing between the property of one State and that of another, irrespective of the criteria originally used to determine its State character. A sound principle of international law governing the question of proprietary rights was that of *situs*, meaning the fact of the property concerned being physically situated in the territory of a sovereign State, in the particular case the territory of the predecessor State. It was therefore the internal law of the predecessor State which was necessarily decisive on that issue. In the various legal systems of the world there were a number of different régimes and degrees of ownership and thus a reference to conformity with the internal law of the predecessor State was not only useful but indispensable.

14. The concept of the absence of effect of a succession of States on the property of a third State was basically correct, but only in so far as the fact of the succession itself was concerned. The consequences of such a succession might potentially affect the special status of the property of a third State, as had happened, for example, upon the attainment of independence by Singapore, when the position of the Consulate-General of Thailand had undergone a change, acquiring the status of an Embassy. Although such an alteration was not a direct result of the actual succession, it was a necessary and natural consequence of the succession.

15. Mr. SHASH (Egypt) said that the phrase "according to the internal law of the predecessor State" in article 12 had objectionable political connotations and that the question which law should apply should be left open.

16. Mr. KÖCK (Holy See) said that his delegation would prefer to postpone a decision on article 12 but, if a vote were taken, the phrase "according to the internal law of the predecessor State" should be the subject of a separate vote.

17. Mr. do NASCIMENTO e SILVA (Brazil) said that his delegation would oppose the idea of taking separate votes on individual phrases of the draft article, but that it would not object to postponing a decision until the views of the Expert Consultant had been heard, in view of the special circumstances attending the initial stages of the Conference. In general, however, he opposed such postponements and thought the rules of procedure should be strictly adhered to. He pointed out that the articles would be the subject of a second reading in the plenary of the Coference and that further discussion would be possible at that time.

18. Mr. MIKULKA (Czechoslovakia), Mrs. BOKOR-SZEGÖ (Hungary) and Mr. RASSOL'KO (Byelorussian SSR) said that, as in the case of other articles discussed earlier, it would be appropriate to defer a decision on article 12 pending clarification by the Expert Consultant.

19. Mr. MONNIER (Switzerland) said that, while he agreed with the representative of Brazil that the rules of procedure should be followed strictly, it was important to realize that there was no first or second reading *per se* at the Conference, unlike the procedure followed in the International Law Commission. Although decisions taken in the Committee of the Whole would be submitted to the plenary Conference for approval—if put to the vote, by the requisite two-thirds majority—it should be borne in mind that there would be no second reading of the articles in the Committee itself.

20. The CHAIRMAN said that, if he heard no objection, he would assume that the Committee wished to postpone taking a vote on article 12 until the Expert Consultant had had the opportunity to provide additional clarifications and that it would take note of the proposal of the representative of the Holy See for a separate vote on the phrase "according to the internal law of the predecessor State".

It was so decided.

21. The CHAIRMAN welcomed Mr. Mohammed Bedjaoui, the Expert Consultant, who had just arrived in Vienna and from whose advice the Conference and the Committee would undoubtedly benefit, for he had

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[2] *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 24* (A/35/24), vol. I, annex II.

been the Special Rapporteur on the subject for the International Law Commission.

22. Mr. BEDJAOUI (Expert Consultant), after paying a tribute to the President of the Conference, the Chairman of the Committee of the Whole and all other members of the General Committee as well as to the Secretary of the Conference and his staff, reviewed the history of the International Law Commission's work on the topic of the succession of States, first in respect of treaties and, more recently, in respect of matters other than treaties. The very fact that it had taken 13 years to produce the text now before the Conference was a measure of the complexity of the subject matter. Moreover, unlike most other topics in international law, the question of the succession of States in respect of State property, archives and debts had never before formed the subject of any attempt at codification by learned societies or individual experts, and hence in undertaking the task the International Law Commission had broken completely new ground. As the former Special Rapporteur, he assumed responsibility for any imperfections of the text; however, the Conference would surely bear in mind the great difficulties of the task and the efforts that had been made to arrive at compromise solutions capable of satisfying the whole of the international community. While looking forward to a full and thorough discussion leading to the adoption of a text that would supplement and enrich the existing body of international law in an important area, he hoped that the Conference would deal gently with a text which, as it were, had been held over the baptismal font for a period of 13 years.

Organization of work

23. The CHAIRMAN, responding to a request by Mrs. BOKOR-SZEGÖ (Hungary) to indicate what stage had been reached in the consideration of articles 7 to 12, said that the Committee had decided to defer examination of article 7 pending consideration of articles 1 to 6. So far as articles 8 to 12 were concerned, it had been thought desirable to await the arrival of the Expert Consultant, who would doubtless clarify the numerous points raised in connection with each article. Those articles would then be considered together with the amendments proposed by various delegations.

The meeting rose at 5.40 p.m.

5th meeting

Friday, 4 March 1983, at 10.20 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 12 (Absence of effect of a succession of States on the property of a third State) (*continued*)

Article 8 (State property) (*continued*)*

1. The CHAIRMAN said that the Expert Consultant was ready to answer questions on points raised in the course of earlier discussions.

2. Mr. FISCHER (Holy See) said that, on reflection, his delegation had decided to withdraw its proposal for a separate vote on the phrase "according to the internal law of the predecessor State" in article 12.

3. Mr. SHASH (Egypt) asked the Expert Consultant what would be the effect of the operation of the phrase "according to the internal law of the predecessor State" in article 12.

4. Mr. BEDJAOUI (Expert Consultant) said that there appeared to be no major difficulties with article 12 except for the reference to the internal law of the predecessor State. The same reference also occurred in other provisions in Part II of the draft convention and he felt it would be preferable to discuss it in greater depth when considering the definition of State property in article 8. Article 12 was a general safeguard clause intended to ensure that a succession of States could not have any negative effect on a third State. As a succession of States concerned the predecessor and successor States as such and could not therefore affect the property, rights and interests of third states, the International Law Commission had considered it preferable to include the phrase in question.

5. Mr. ASSI (Lebanon) said that, while appreciating the motive for the inclusion of a safeguard clause to protect third States, he considered that the vital question in that context was how and when the third State had acquired the property concerned. Either it should be made quite clear in the text that the property had been acquired lawfully or the article should be amended in some other way.

6. Mr. MOCHI ONORY DI SALUZZO (Italy) asked the Expert Consultant what was intended by the phrase "situated in the territory of the predecessor State". His delegation felt that "territory" in that particular article should be understood to be the entire territory actually involved in the succession.

7. Mr. MONCEF BENOUNICHE (Algeria) said that article 12 as drafted by the International Law Commission was acceptable. However, his delegation wondered whether the idea of a critical period immediately prior to succession, during which a certain amount of State property might be passed to a third State by the

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* Resumed from the 1st meeting.

predecessor State, should not be taken into account, since such an operation might infringe the rights of the successor State. He appreciated, however, that such a period would be extremely difficult to define.

8. Mr. OBEID (Syrian Arab Republic), on the subject of the internal law of the predecessor State, asked what would be the position in the event of the predecessor State amending its internal law just prior to succession to meet its own requirements, to the detriment of the successor State.

9. Mr. MEYER LONG (Uruguay) suggested that the purpose or use of the property of the third State concerned ought perhaps to be taken into consideration in view of its possible importance for the future of the successor State.

10. Mr. ECONOMIDES (Greece) asked for an explanation of the words "as such" as they appeared in article 12.

11. Mr. BEDJAOUI (Expert Consultant) answering the last question first, concerning the use of the words "as such", explained that there were two essential and separate elements in the concept of the successor State, in that it was both a successor and a State. A succession of States as a legal institution could not affect a third State's property, rights and interests. Since, however, the successor State had sovereign rights, its sovereignty had to be taken into account. It was conceivable that immediately after the succession the successor State in the exercise of its sovereignty took a number of decisions that might affect the property of a third. But that was not governed by international law on the succession of States which, "as such", had no effect on third States. Those actions would be governed by other branches of international law.

12. The question of the "critical period" prior to succession had been raised in different ways by the representatives of Algeria, Lebanon, Syria and Uruguay. When a succession of States occurred, and particularly if it occurred in circumstances of tension, it was understandable that there should be fears that, immediately before the succession, there might be a passing of State property from the predecessor State to a third State in such a way as to reduce the nature, substance, value or amount of State property to be passed on to the successor State. In some countries, private law and commercial law covered that aspect with regard to individuals and corporations, particularly where fraudulent bankruptcy was concerned, for example, but it was not easy to make provision for a period immediately prior to a succession of State to prevent the illegal passing of State property to a third party. He personally believed that, if a predecessor State intended during that difficult period to pass on State property, it would do so more to its own advantage than to the advantage of a third State. Moreover he did not think that, on the eve of a succession, a third State would risk acquiring property title to which might well be contested by the successor State. The risk of a third State undertaking operations in connection with State property of the predecessor State on the eve of succession was therefore minimal and consequently it would not be wise to encumber the wording of article 12 further by inserting another safeguard clause within the existing safeguard clause. It was understood that article 12 dealt with a succession of State which took place legally, meaning, generally, that anything that took place in an irregular manner would have no legal effect.

13. In reply to the representative of Italy, he said that he personally tended to interpret the phrase "situated in the territory of the predecessor State" restrictively, in the sense that it referred only to that property of the third State which was situated in the territory involved in the succession of States.

14. Referring to the question asked by the representative of Syria concerning the possibility that the predecessor State might *in extremis* amend its own legislation during the critical period just preceding the succession, and the possibility open to the successor State to contest such an amendment, he explained that the Commission had not attempted to cover all cases of succession of States as the subject was far too wide. In some cases, where a succession of States had occurred in consequence of decolonization, newly independent countries had continued to apply pre-existing colonial legislation for a specific period of time, purging it of all elements which might be damaging to their own sovereignty. The question of internal law was extremely complex and the Commission had had no time to consider it in all its aspects. He would refer to the problem again in connection with article 8.

15. The representative of Uruguay had suggested that different kinds of State property might be distinguishable, and treated differently, according to the purpose for which the property was used. While the idea was a good one and while he personally had originally tended to make a distinction between State property and other property, it had become clear that codification in that area would have encroached upon private international and commercial law. The Commission had consequently restricted itself to dealing with State property within the context of public international Law *stricto sensu*.

16. The CHAIRMAN asked the Committee whether it was ready to take a decision to refer article 12 to the Drafting Committee.

17. Mr. HALTTUNEN (Finland) said that his delegation would prefer not to make a decision on article 12 at the moment, since the article was linked to article 8. Furthermore, he announced that his delegation intended to propose an oral amendment to article 12 when the Danish amendment to article 8 (A/CONF.117/C.1/L.1) was considered.

18. Mr. SHASH (Egypt) suggested that further consideration should first be given to article 8, particularly since the Expert Consultant intended to comment on the words "according to the internal law of the predecessor State" which also occurred in that article.

19. Mr. BOCAR LY (Senegal) supported that suggestion. Referring to the principle in article 12 that a succession of States as such should not affect property, rights and interests of a third State, he asked what was the link between that principle and that referred to in paragraph (2) of the commentary, namely that a succession of States in no way prejudiced any measures that the successor State, as a sovereign State, might adopt

subsequent to the succession, and in what way the two principles were compatible. He suggested furthermore that the reference to the internal law of the predecessor State in article 12 might become redundant if the meaning of "State property" was defined in article 8.

20. The CHAIRMAN said that, in view of the links between articles 12 and 8, and in view of the Finnish delegation's announced intention, it would be preferable to settle the provisions of article 8 first.

21. Mr. BEDJAOUI (Expert Consultant) said that article 8 had been one of the more difficult provisions so far as the International Law Commission was concerned, mainly because of the perennial problem of drawing up legal definitions.

22. The amendment proposed by Denmark to article 8 had the great merit of clarity and simplicity but, in his view, the definition of State property as all that was owned by the predecessor State was rather too broad. A distinction was made in some internal legal systems between the "private domain" of the State and its "public domain". Both "belonged" to the State but had separate legal statutes. On the other hand, while it was true that, in general, property was what was owned, some things belonged to the State not solely under property law but by virtue of the State's sovereignty. It had been quite clear to the International Law Commission that sovereignty, could not be the subject of transfer; a successor State exercised its own sovereignty. By postulating such a broad definition of State property, the Danish amendment ran the risk of including in the concept of State property elements which were not subject to transfer, and thus implying that the successor State would be exercising the transferred sovereignty of another State. Thus while the proposal might appear attractive, it would give rise to serious problems of interpretation.

23. The amendment submitted by France (A/CONF.117/C.1/L.5) raised problems inasmuch as it attempted to define the meaning of "property" in terms of its opposite; in other words, an asset in terms of a liability. He felt that, in the interests of clarity and consistency, it would be better to deal with the matter of obligations elsewhere in the text, preferably in Part IV, which related to debts.

24. Many delegations had asked questions concerning the definition and scope of "internal law". The representative of India had asked whether the internal law of the predecessor State included treaties which had become part of the internal legal order of that State. In his own opinion, treaties duly ratified by the predecessor State did indeed become part of that State's domestic legislation; the point acquired greater subtlety, however, when one considered the relationship between the existing draft Convention and the 1978 Vienna Convention on Succession of States in Respect of Treaties.

25. The representative of Japan had asked a question

tainly form part of the internal legal order of the predecessor State, but, in practice, the problem would arise only if the successor State did not wish to succeed to the instrument in question, thereby depriving itself of a number of rights, including the right of membership in the organization or institution concerned. Leaving aside the fact that it was difficult to see why a State should wish to forgo such rights, it was a moot point whether the successor State would acquire the attributes of a member of the institution in question by virtue of the succession of States or by virtue of being a sovereign State.

26. After lengthy discussion, the International Law Commission had decided to take as its point of reference that the internal law to be applied for the purpose of determining "State property" should be that of the predecessor State at the precise date of succession. He believed that that should be the premise on which the Conference should base its work; otherwise it might become enmeshed in inextricable problems. The questions raised had all demonstrated the need for some reference to internal law. While there were several possible ways of defining State property (either by identification of property, by convention or agreement, through an international organization or multilateral peace treaty), they all involved reference back to internal law. The International Law Commission was aware that situations had occurred in which identification of State property had been made by reference to an internal law other than that of the predecessor State. For example, there had been cases in which the internal law of a territory affected by a succession of States—which might differ from that of the predecessor State—had been invoked. There had also been cases in which the successor State had considered its own internal law as the only law which applied in determining State property subject to succession.

27. The conclusion had been that the internal law of the predecessor State was the most convenient and logical yardstick, even if it had not always been applied in the past. The reference to the internal law of the predecessor State should be seen as both desirable and inevitable.

28. The United Kingdom delegation had observed that article 8 made no reference to property which at the time of the succession of States belonged to the government of a dependent territory. If the succession in question was the result of decolonization, the property that had formerly belonged to the dependent territory did not require the application of the law of succession of States in order to continue to belong to that territory. Alternatively, if the succession was of another type, the only property that would pass would be that of the predecessor State under its own internal law.

29. In conclusion, he referred to a point raised by a number of delegations in respect of both article 8 and article 12, namely, defining the concept of "property" by the words "property, rights and interests". That

1943 Declaration of London[2] on the protection of cultural property.

30. Mr. MONNIER (Switzerland) said that his delegation had been fully convinced by the arguments advanced by the Expert Consultant to justify the reference to internal law, particularly in article 8. Moreover, the use of the expression "property, rights and interests" appeared to be appropriate as it had the support of past treaties and of case law.

31. The Expert Consultant had suggested that the amendment submitted by France should be dealt with under Part IV concerning State debts. The Swiss delegation had some doubts as to the logic and implications of that suggestion. The kind of obligation envisaged in the French amendment, charges or mortgages attaching to buildings, was not covered in Part IV, which related to the financial obligations of States.

32. He believed strongly that the idea underlying the proposed amendment should not simply be discarded, particularly as it was implicitly referred to in the draft. The succession of States did not remove the obligations attaching to State property, as the Expert Consultant himself had recognized. The fundamental fact that property passed as it was should be referred to somewhere in Part II of the draft. Either the French proposal or the proposed amendment by the Federal Republic of Germany to article 9 (A/CONF.117/C.1/L.3) could be taken as the basis.

33. Mr. LEHMANN (Denmark) said that the proposal submitted by his delegation had been motivated by a desire to facilitate the discussion. A number of delegations had felt that the definition offered by the International Law Commission was not sufficiently exhaustive and was circular in its logic. Moreover the reference to property, rights and interests was not central to the basic thrust of article 8, which was to determine what property belonged to the State. The formulation offered by his delegation corresponded fully to the definition of State archives in article 19. He could not understand the argument advanced by the Expert Consultant that the proposed definition was too broad. His delegation would be interested to learn whether other delegations were equally concerned by the need for a more exhaustive definition; if they were not, he might be able to accept the definition offered by the International Law Commission in article 8, preferably with the amendment proposed by France.

34. Mr. GUILLAUME (France) emphasized that the International Law Commission had accomplished an extremely difficult task on a very complex subject which had highly varied precedents. He recalled the remarks of the Expert Consultant, the former Special Rapporteur of the International Law Commission, according to which that body had had to show imagination and creativity. Basically, its work was to develop international law, not to codify existing practice. Such development could, of course, only be achieved with the formal agreement of States. In order to obtain that agreement, the Conference naturally had to find making the amendments necessary to arrive at a text which was acceptable to all.

35. He said that he had been convinced by the arguments of the Expert Consultant with regard to the use of the expressions "property, rights and interests" and "internal law". The purpose of his delegation's amendment was to stress that the passing of the ownership of property was indissolubly linked with the passing of relevant obligations, although that fact was admittedly inherent in the general principles of the law of property and obligations.

36. Mr. NATHAN (Israel), referring to the Danish amendment, said that the International Law Commission terminology "property, rights and interests" had the advantage of being derived from the numerous treaties in which State property was so defined and from the case law of the International Court of Justice. For the sake of continuity therefore that terminology should be retained. The French amendment embodied the maxim of Roman law *res transit cum onere suo*. It should appear somewhere in the draft convention but it was not clear that its proper place was in article 8, which defined assets, rather than in article 9, which dealt with the corresponding liabilities. The proposed amendment was concerned to safeguard rights *in rem* and hence should not be considered in the context of Part IV which dealt with State debts.

37. Mr. HALTTUNEN (Finland) considered that the Danish amendment was more precise than the draft text of article 8 proposed by the International Law Commission. It was not however aligned with articles 19 and 31; perhaps the terms "State archives" and "State debts" should also be defined. Article 8 was closely associated with article 12. Neither the Commission's draft of article 8 nor the Danish amendment were consonant with article 12. In order to take into account the position both of the predecessor State and of third States, he proposed that the Danish amendment should be further amended to read ". . . 'State property' means all that is owned by a State, according to the internal law of the predecessor State . . .". For the sake of consistency, it would then be necessary to amend the title and text of article 12 to read:

> "*Article 12* (Absence of effect of a succession of State on State property of a third State)
>
> "A succession of State shall not as such affect State property which, at the date of the succession of States, is situated in the territory of the predecessor State and is owned by a third State according to the internal law of the predecessor State."

38. He felt that such redrafting would allay the concern expressed by many delegations. The notion of State property included that of third States and hence article 7, which defined the scope of the subsequent articles of Part II, was not consistent with the existing text of article 8. The French amendment could be inserted in his delegation's proposed text for article 8. Some small changes would also be required in articles 9, 10 and 11.

the International Law Commission's text of article 8. The expression "property, rights and interests" was a generally recognized definition of State property and another formulation, such as that proposed in the Danish amendment, should not be used. Furthermore, the opening phrase of that amendment appeared to be superfluous in view of article 7. The commentary to the French amendment was unexceptionable but the amendment itself merely complicated the general principle that, when property passed, the assets and liabilities passed together. The International Law Commission had fully discussed the matter. He added that it was not clear from the text of the proposed amendment whether the phrase "including the obligations attaching to them" applied only to "interests" or to property and rights as well.

41. He was in some difficulty about the oral amendments proposed by the Finnish representative. It would seem that they would not be available in writing in time for delegations to study before voting on article 8. He urged all delegations to submit amendments in good time in accordance with the rules of procedure.

42. Mr. do NASCIMENTO e SILVA (Brazil) agreed with the Soviet representative with regard to the late submission of oral amendments.

43. After hearing the comments of the Expert Consultant, he had no doubt that the International Law Commission's text of article 8 should be retained. The phrase "property, rights and interests" was internationally accepted and had a fairly definite meaning. It would be unsafe to adopt new terminology. It would be easy to insert the French amendment into the text, but there seemed to be no particular merit in so doing. Furthermore, the phrase "including the obligations attaching to them" appeared to apply not only to property, where it was relevant, but also to interests. The Expert Consultant had stated that he was not completely satisfied with the reference to internal law but it appeared to be the only solution and it would clarify the point which was the subject of the French amendment.

44. Mrs. OLIVEROS (Argentina) said that her delegation had previously expressed concern about an apparent inconsistency between the title of article 8 and the definition appearing in the text. Her delegation had also endorsed the Uruguayan Government's criticism (A/CONF.117/5, p. 81) of that definition as being tautological. However, if the concept of State property was in future interpreted in accordance with the comments of the Expert Consultant to include all forms of property, movable and immovable, the difficulties would be solved. With regard to the French amendment, it was clear that no right could pass to the successor State in a form different from that in which it had been held by the predecessor State; hence the ownership of State property could not pass without the corresponding charges. She inquired whether the concept of "rights" as defined by the International Law Commission would include shares held by the predecessor State in enterprises not situated on the territory which was the object of the succession of States.

45. Mr. MAAS GEESTERANUS (Netherlands) said that he had been convinced that the references in article 8 to "property, rights and interests" and to the internal law of the predecessor State should be retained. However, the discussion had shown that most delegations were agreed that rights could not pass without the corresponding obligations and that Part IV of the draft was concerned with State debts, not with State property. The point should be covered either in article 8 or in article 9 and the Drafting Committee might be requested to find the appropriate place and formulation.

46. Mr. MONCEF BENOUNICHE (Algeria) said that the Committee should bear in mind the overall structure and balance of the International Law Commission's text. Three distinct elements, namely, State property, State archives and State debts, were dealt with in three separate parts of the draft convention. Obligations attaching to State property were State debts and should logically be dealt with in Part IV which was concerned with that subject.

47. Mr. FREELAND (United Kingdom) supported the French amendment to article 8. It appeared that those who had expressed some doubt about it were concerned more with aspects of drafting or placing than with the substance of the amendment, as explained in the commentary which accompanied it in document A/CONF.117/C.1/L.5. It would be appropriate to refer it to the Drafting Committee. For his part, he continued to believe that it was a simple and useful text in the right place, given the integral relationship between the property, rights and interests and the attaching obligations.

The meeting rose at 1 p.m.

6th meeting

Friday, 4 March 1983, at 3.10 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1, A/CONF.117/C.1/L.1-L.7)

[Agenda item 11]

Article 8 (State property) (*concluded*)

1. The CHAIRMAN reminded the Committee that it had before it amendments submitted by Denmark (A/CONF.117/C.1/L.1) and France (A/CONF.117/C.1/L.5), as well as two oral amendments submitted by Finland.

2. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation found the Danish amendment unacceptable because its definition of State property was inadequate. He preferred the International Law Commission's draft, which contained all the elements that should be covered in the definition, including rights and interests.

3. The French amendment provided a certain clarification, but he wondered if it was necessary in view of the clear definition provided by the Commission.

4. Mr. POEGGEL (German Democratic Republic), expressing his delegation's support for the International Law Commission's draft, said that the French amendment would weaken the underlying concept as well as the text of the article. The International Law Commission's draft dealt with the legal consequences of the succession of States for State property from the standpoint of public international law, whereas the French amendment seemed designed to protect the rights and legal interests of private persons at the level of public international law. That was irrelevant to article 8 and, in any case, the rights and obligations of natural and juridical persons were covered by article 6. His delegation could not agree with any proposal which directly or indirectly introduced into the draft convention legal matters not regulated by international public law.

5. Mr. BEDJAOUI (Expert Consultant) said that in general the definition of State property in article 8 did not appear to be contested. The main problem was that raised by the French amendment.

6. He welcomed the Danish delegation's willingness not to press its amendment. It was true, as the representative of Denmark had pointed out at the previous meeting, that a parallel could be drawn between articles 8 and 19, but there was also a difference. Article 19, concerning State archives, defined a particular property *in concreto*, whereas article 8 defined property *in abstracto*. If State property were to be defined as "*all* that is owned by a state", that could include elements other than property. Concordance of the two articles

7. The point raised by the French amendment was, he believed, resolved by the general understanding that when State property passed, obligations also passed. The amendment created a drafting problem, moreover, since the inclusion of a reference to obligations would complicate the future interpretation of article 8. The idea of obligations in respect of movable or immovable property was perfectly clear, but it was more difficult to comprehend charges or obligations in respect of rights and interests. The International Law Commission had therefore preferred to avoid overburdening a text that was quite clear. He trusted that the French delegation, too, would not press its amendment, in view of the general understanding to which he had referred.

8. Regarding certain doubts that had been expressed, in particular by the representative of Argentina, he assured those concerned that there was no question of article 8 containing merely a tautological definition. The article contained three qualifications in respect of the property in question: that it belonged to the predecessor State, that it so belonged according to a body of rules which was the internal law of the predecessor State, and that those rules were those which were in force on the date of the succession of States.

9. The International Law Commission had encountered the same difficulty with regard to the reference to the internal law of the predecessor State as had the participants in the Conference and had decided that it could not do otherwise than refer to that law.

10. Mr. SHASH (Egypt) said that, in the light of the Expert Consultant's explanation, he would accept the International Law Commission's text. The Danish amendment was not sufficiently precise; and the French amendment, while expressing a generally understood notion, would be out of place in a definition of State property, since an obligation was not property.

11. Mr. ECONOMIDES (Greece) said that his delegation supported the Danish amendment, which would simplify the text. It could also accept the International Law Commission's draft, which was based on the generally accepted distinction between property, rights and interests.

12. He agreed with the idea embodied in the French amendment, as one of the customary rules concerning succession of States was that both liabilities and assets should pass simultaneously from predecessor to successor State, and he endorsed the observations of the representative of Switzerland at the preceding meeting in that regard. He was satisfied with the statement made by the Expert Consultant, who had made it clear that the notion was generally accepted, either expressly or tacitly. He was inclined to agree, however, that the French amendment should not be included in article 8, the latter being concerned with State property, and

best place would be article 11. Subject to two reservations—an explicit reservation concerning the actual articles of the draft convention and a reservation concerning what might be agreed by the States concerned or decided by other competent authorities—article 11 could read as it did at present, with the addition after "successor State" of a phrase such as "together with the obligations attaching to it".

13. If the States concerned wished, by agreement, to provide otherwise, they could do so. In the absence of such agreement, the passing of property would imply the passing of both assets and liabilities.

14. Mr. LEHMANN (Denmark) said that, while he was not fully convinced by the arguments against his delegation's amendment, he recognized that there was a consensus of the Committee in favour of maintaining article 8 as drafted by the International Law Commission. In order not to delay proceedings, his delegation therefore withdrew its amendment (A/CONF.117/C.1/L.1).

15. Mr. OBEID (Syrian Arab Republic) expressed support for article 8 as originally drafted.

16. Mrs. OLIVEROS (Argentina) said that she too could accept article 8 as drafted by the International Law Commission, in the light of the explanations given by the Expert Consultant and the interpretations given by various delegations.

17. She suggested that the Drafting Committee should be requested to ensure the concordance of terminology, particularly in respect of "State property" ("*bienes de Estado*" and "*biens d'Etat*"). Under her country's legal system, the word "*bienes*" had a somewhat broader connotation than the word "*propriedad*". If necessary, some definitions could be inserted in article 2, including those suggested by the representative of Greece.

18. Mr. HALTTUNEN (Finland) withdrew the oral amendments to draft articles 8 and 12 which his delegation had proposed. There had been no time to submit them in writing but they would presumably be reflected in the summary record of the 5th meeting and could be studied by those who were interested. He felt that they would have considerably improved the draft convention.

19. Mr. GUILLAUME (France) said he was glad to note from the Expert Consultant's statement that there appeared to be a unanimous understanding that obligations were not separated from property, rights and interests and that article 8 must be understood in that sense. In the light of that understanding, he would not press for a vote on his delegation's amendment and would be satisfied to have it sent to the Drafting Committee for the latter's decision on the drafting of article 8, taking into account the discussion on articles 9 and 10 which might possibly have some bearing on the matter.

20. Mr. CONSTANTIN (Romania) said that, in the light of the explanations given by the Expert Consultant, his delegation was ready to support the retention of article 8 as drafted by the International Law Commission. With regard to the French amendment, he agreed with the Expert Consultant's explanation of the general

21. Mr. KOBIALKA (Poland) said that, in view of the comments and explanations of the Expert Consultant, his delegation accepted the text of article 8 proposed by the International Law Commission. The French amendment was not a clarification: it introduced new elements in the article which were not consistent with property, rights and interests. He understood the idea underlying the French amendment but obligations meant debts and article 8 was not the proper place for them to be mentioned.

22. Mrs. BOKOR-SZEGÖ (Hungary) said that her delegation, too, supported the text of the article as drafted by the International Law Commission. As a definition, the provision should contain only elements concerning the concept defined and not elements concerning the opposite, as the French amendment did.

23. The inclusion of the latter in article 8 would cause confusion, in view of the provisions of Part IV, where the concept of State property was mentioned in articles 35 and 36. The Drafting Committee should perhaps take that fact into account.

24. Mr. RASUL (Pakistan) said that he had no difficulty in accepting the International Law Commission's draft of article 8, particularly in view of the Expert Consultant's explanation.

25. Mr. MIKULKA (Czechoslovakia) said that his delegation accepted article 8. Regarding the French amendment, he regretted that he could not agree that it was only a drafting matter. His delegation considered the question involved to be a matter of substance. Defining property and rights as including obligations would cause dangerous confusion, since there were two sides of a coin. An obligation was the reverse of a subjective right. He could not accept the definition of property and rights as obligations.

26. Mr. SAINT-MARTIN (Canada) said that his delegation had maintained from the start of the debate that a reference was needed in article 8 to obligations attaching to property, rights and interests passing to the successor State. His delegation had not changed its view and he therefore reaffirmed its position and supported the French amendment.

27. The CHAIRMAN, summing up, said that, in the light of the statements by the representatives of Denmark, Finland and France, the Committee now had before it only the International Law Commission's draft. The representative of France had merely asked that his delegation's amendment should be sent to the Drafting Committee which could consider the possibility of using the ideas contained in that amendment in the final formulation of article 8. He asked the Committee if it wished to refer the text of article 8 as drafted by the International Law Commission to the Drafting Committee and if it wished the text of the French amendment to be referred also to the Drafting Committee for possible use in the final formulation of the text.

It was so decided.

28. Mr. OWOEYE (Nigeria) said that the definition of State property proposed in article 8 was not entirely satisfactory. As the Commission's commentary had pointed out, customary international law had

what constituted State property. What then would occur if the internal law of the predecessor State were silent on the vital point in question? It was also not clear what procedure could be followed in the event of a dispute between the predecessor and the successor States over the ownership of certain property; a settlement in accordance solely with the internal law of the predecessor State would be of doubtful validity in an international dispute of the kind, especially as that internal law might be actively detrimental to the interests of the successor State. There was also a need for clarification with regard to the status of property, for example antiquities and works of art, removed from the territory of the predecessor State prior to the succession but which should rightly be regarded as part of the national heritage of the successor State and thus subject to passing.

29. With respect to the amendment proposed by France, his delegation shared the view of some previous speakers and the Expert Consultant that the question of obligations was out of place in the context of article 8 and would be more appropriately dealt with in Part IV of the draft articles.

30. Mr. MIKULKA (Czechoslovakia), speaking on a point of order, said that he did not understand the purpose of referring the French delegation's amendment to the Drafting Committee when it had not been adopted by the Committee of the Whole.

31. Mr. JOMARD (Iraq) said that it had been his understanding that the idea underlying the French amendment had the general support of the Committee. If, however, as the representative of Czechoslovakia had implied, that was not the case, the Drafting Committee would be placed in a very awkward situation in not knowing what approach to take to the amendment.

32. Mr. ASSI (Lebanon) said that he also failed to see the point of referring the French amendment to the Drafting Committee since it had, together with all other proposals and suggestions, been taken into account during the debate which had led to the adoption of the original draft article; it was therefore no longer a matter for consideration.

33. Mr. ROSENSTOCK (United States of America) recalled that the Expert Consultant had already clarified the relationship between the French amendment and the Commission's draft article; he had noted that the fundamental idea that property, on passing, remained subject to earlier obligations was quite correct and sound but that it posed a drafting problem because of the juxtaposition of "obligations" and "interests" and the doubtful nature of any relationship between them. It was on that basis that the representative of France had withdrawn his amendment, but it was only right that the Drafting Committee should have the opportunity to attempt to incorporate the underlying idea, which had been generally endorsed by the Committee of the Whole. In doing so it should be free to consult the text of the French amendment as a possible source of guidance and ideas.

34. Mr. MONCEF BENOUNICHE (Algeria) said it was his understanding that the French amendment was being referred informally to the Drafting Committee for it should necessarily be incorporated in the final text of the article. It might be more appropriate to include the reference to obligations in another part of the future convention and the Drafting Committee would take that into consideration.

35. The CHAIRMAN noted that the representative of France had withdrawn his delegation's amendment on the understanding that it would go forward to the Drafting Committee, along with the draft article as adopted, as material for discussion without any formal status. It was his understanding that such had been the Committee's decision.

Article 9 (Effects of the passing of State property) (*continued*)*

36. The CHAIRMAN drew the Committee's attention to three amendments to article 9: A/CONF.117/C.1/L.2, L.3, and L.7, proposed respectively by Austria, the Federal Republic of Germany and Greece.

37. Mrs. THAKORE (India) said that the Austrian amendment, while admirably brief and clear, was nevertheless not adequate in that, by doing away with the idea of the simultaneous extinction and arising of rights, it failed to reflect all the essential elements of the juridical effects of the phenomenon. That comment also applied to the Greek amendment. The amendment proposed by the Federal Republic of Germany contributed nothing vital to the article. On the contrary, it might lead to confusion and ambiguity. Her delegation would therefore prefer to see article 9 adopted as drafted by the International Law Commission.

38. Mr. SUCHARIPA (Austria) said that his delegation's purpose in proposing its amendment had been to offer one possible solution to the difficulty of harmonizing the theoretical concept, accurately reflected in the Commission's draft article, with its practical implications. The idea of the extinction and arising of rights implied a break in continuity and a degree of uncertainty as to the exact quality and scope of the rights passing to the successor State. While his delegation continued to believe that the article called for improvement so as to place greater emphasis on the idea of continuity, it was prepared to withdraw its amendment and lend its support to that proposed by the Federal Republic of Germany.

39. Mr. OESTERHELT (Federal Republic of Germany) said that the Commission's article was in substance acceptable to his delegation. However he felt that the article would be incomplete or open to misunderstanding if it did not make clear that the passing of state property could not lead to the disappearance of charges attaching to such property. That was a problem which his delegation's amendment sought to resolve. Since it seemed to be the general feeling of the Committee that that underlying idea was sound, a view which had been confirmed by the Expert Consultant, he hoped that the amendment would be supported.

40. Mr. BEDJAOUI (Expert Consultant) said that, while sympathizing with the concern that had prompted the amendment proposed by the Federal Republic of Germany, he feared that the phrase to be added might

lead to confusion and ambiguity. The addition of the words "to the extent to which the predecessor State owned such rights" suggested the possibility of a situation in which the predecessor State did not in fact own the rights in question. Such a situation would be quite irregular, and indeed there would then be no basis for a succession at all. In another potential situation possibly envisaged by the amendment, in which all other conditions for a succession were fulfilled, but in which there were doubts as to certain of the property rights claimed by the predecessor State, it was in any event only the internal law of the predecessor State itself which could determine the issue. Such a lack of certainty in the article was likely to lead to misinterpretations. In any event, it was already plain that a predecessor State could in no circumstances pass on either rights that it had not possessed or more rights than it had possessed. The amendment proposed by the Federal Republic of Germany was therefore not necessary.

41. The theoretical basis of the amendment proposed by Greece was sound. However he felt that the proposed wording, viewed out of context by a reader unfamiliar with the underlying issues, would give the erroneous impression that the effect of a succession of States was exclusively the passing of property.

42. Mr. MONCEF BENOUNICHE (Algeria) said that in the amendment proposed by the Federal Republic of Germany there seemed to be a contradiction between the basic principle of the article, which was that all the rights of the predecessor State were extinguished, and the proposed restrictive clause, which implied that in certain circumstances only a part of the rights of the predecessor State might be subject to passing. That raised the problem of how that part was to be determined.

43. The amendment of the delegation of Greece was commendable in its simplicity but it did not fully reflect all aspects of the process of succession. In particular, the rupture, precisely limited in time, which occurred between the extinction of the rights of the predecessor State and the arising of the rights of the successor State must be reflected, for it was precisely in the effects of that phenomenon that the passing of property consisted. The Algerian delegation found the International Law Commission's draft article more convincing.

44. Mr. ECONOMIDES (Greece) said that the purpose of his delegation's amendment to article 9 was twofold: to enhance the clarity of the article by deleting the reference to "rights" and referring directly to the property of the predecessor State, and to bring out more clearly the close link between article 9 and article 8.

45. Mr. MONNIER (Switzerland) observed that the idea behind the amendment proposed by the Federal Republic of Germany was no different from that which had already been generally accepted in the consideration of the French amendment to article 8, namely, that obligations and charges attaching to property automatically passed with that property. Since there was no dissent regarding the substance of that idea, it was essential for the Drafting Committee to decide where it could best be reflected. In his view article 9 would be the most appropriate context.

46. For the purpose of the proposed convention the prime requirement was to affirm a rule of conduct on the passing of State property rather than to provide a theoretical justification for such a rule. Noting that articles 10 and 11 and the articles in section 2 of Part II were all concerned with the passing of State property, he wondered whether article 9, which offered an explanation of what occurred in the operation of passing, did not in fact encumber a rule which was not in itself open to question. In that regard the amendment proposed by Greece seemed merely to provide an alternative theoretical approach.

47. Mr. PHAM GIANG (Viet Nam) said that the explanation provided by the Expert Consultant concerning the text of article 9 and his comments on the proposed amendments let his delegation to prefer the wording put forward by the International Law Commission, which defined the phenomenon of the passing of State property in carefully chosen terms.

48. Mr. RASUL (Pakistan) said that, as the Expert Consultant had pointed out, the principle that a State could not pass on rights it did not possess, or better rights than it possessed, applied in the case of article 9. That underlying principle, in his delegation's view, seemed to take care of the concern reflected in the amendment proposed by the Federal Republic of Germany.

49. Mr. ROSENSTOCK (United States of America) said that his delegation could accept the amendment proposed by Greece but regarded the matter involved as one which could safely be left to the Drafting Committee. The Greek proposal was more a description than an explanation of the process of the passing of State property. It was important to avoid the implication that any volitional act was involved and also to avoid any discontinuity. He therefore suggested that the article might be redrafted to read: "A succession of States entails the property of the predecessor State, as defined in article 8, passing to the successor State . . .". Such a wording would correspond to the approach taken by the International Law Commission in its commentary on the draft article.

50. Mr. BOCAR LY (Senegal) said that the Expert Consultant's explanation resolved the difficulties which article 9 seemed to create for the delegation of the Federal Republic of Germany. The Greek amendment appeared to imply that the only effect of a succession of States would be the passing of State property: it was thus less precise than the International Law Commission's text, which covered both the passing of State property and the legal effects of that passage.

51. Mr. OESTERHELT (Federal Republic of Germany) said that the International Law Commission's text did not fully correspond to his delegation's concept of the passing of State property. The discontinuity implied by the terms "extinction" and "arising" would create a logical and juridical vacuum into which the rights concerned—rights which related to such concrete matters as mortgages—might fall.

52. At the Committee's 2nd meeting, the Expert Consultant had drawn attention to the principle that *nemo plus iuris transferre potest quam ipse habet*; his

delegation had submitted its amendment with the aim of affirming that principle.

53. Mrs. OLIVEROS (Argentina) agreed with the previous speaker that it was essential to avoid any possibility of a vacuum or gap, and pointed out that in private law unpleasant circumstances could arise between the death of an owner of property and the transfer of the deceased's property rights. Accordingly, it should be clear that no vacuum existed between "extinction" and "arising". Moreover, she suggested that the text of the article should be brought into line with its title. With that consideration in mind her delegation was prepared to accept the amendment proposed by Greece.

54. Mr. GUILLAUME (France) said that, while the International Law Commission had evidently aimed at a compromise in its formulation of article 9, the actual result was a contradiction between the reference to "passing" in the title and the use of "extinction" and "arising" in the text. He agreed with the representative of Switzerland that there was no need to provide a "metaphysical" justification for the term "passing", which corresponded to the realities of international practice.

55. His delegation had been prepared to support the Austrian amendment which had now been withdrawn in response to criticism. The Greek amendment represented an acceptable compromise. The amendment proposed by the representative of the Federal Republic of Germany was in line with the amendment to article 8 which the French delegation had proposed and it was therefore also acceptable.

56. Mrs. ULYANOVA (Ukrainian SSR) said that she was unable to discern any "black hole" or void into which property rights could somehow vanish. She found the International Law Commission's text satisfactory, particularly in the light of the Commission's commentary on the article.

57. She agreed with the representative of India that the Greek amendment did not result in any improvement to the text: all the articles following article 8 were based on the definition of State property given in that article, and there was therefore no need to refer to article 8 in article 9. Nor did the amendment of the Federal Republic of Germany add anything of substance to the existing draft article.

58. Mr. HAWAS (Egypt) agreed that the amendment proposed by the Federal Republic of Germany was unnecessary. In his view, the omission from the Greek amendment of a reference to the "extinction" and the "arising" of rights vitiated the usefulness of that amendment. The underlying idea was that of the passing of existing rights: there was no question of new rights arising, and the International Law Commission's text left no room for ambiguity in that regard.

59. While he favoured adoption of the Commission's text, he thought that the best solution might be to refer the amendments of Greece and the Federal Republic of Germany to Drafting Committee.

60. Mr. MEYER LONG (Uruguay) said that the Committee should follow the recommendations of the Expert Consultant with regard to article 9. He agreed however with the representative of Egypt that the two amendments should be referred to the Drafting Committee.

61. Mr. OBEID (Syrian Arab Republic) said that his delegation could detect no trace of any gap, vacuum or ambiguity in the text as formulated in the draft article submitted by the International Law Commission. The process of the passing of rights to State property took place naturally, without any discontinuity, and there was therefore no need for the amendments submitted by the Federal Republic of Germany and Greece.

Article 10 (Date of the passing of State property) (*continued*)*

Article 11 (Passing of State property without compensation) (*continued*)**

62. Mr. HAWAS (Egypt) said that the draft amendment which his delegation had transmitted to the secretariat that afternoon in connection with article 11[1] was also intended to apply to article 10.

63. Mr. OWOEYE (Nigeria) said that his delegation supported the amendment to article 11 proposed by Egypt and recommended that it should be referred to the Drafting Committee, on the understanding that the words "an appropriate international body" also covered regional and subregional arrangements.

The meeting rose at 6 p.m.

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* Resumed from the 2nd meeting.

** Resumed from the 3rd meeting.

[1] Subsequently issued under the symbol A/CONF.117/C.1/L.17.

7th meeting

Monday, 7 March 1983, at 10.15 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 9 (Effects of the passing of State property) (*continued*)

1. Mr. ECONOMIDES (Greece), replying to critical comments made at the previous meeting on his delegation's amendment to article 9 (A/CONF.117/C.1/L.7), said that a remark made to the effect that the amendment was identical with the Austrian amendment (A/CONF.117/C.1/L.2) which had been withdrawn, had no doubt been meant to suggest that the Greek amendment should likewise be withdrawn. He pointed out that, as had been recognized by many speakers, his delegation's amendment in fact constituted a distinct improvement on the text suggested by Austria, and also that the Austrian delegation's decision to withdraw its amendment in no way implied an obligation for the Greek delegation to do likewise.

2. To the objection that his amendment reduced the succession of States to a simple operation of passing of property, he replied that article 9 as originally drafted was concerned only with the passing of rights from the predecessor State to the successor State. That much was clear both from the article's title and from its text. The characteristic feature of the Greek amendment was that it went straight to the heart of the matter without any preamble or preliminary statement of motives. It was his delegation's considered opinion that the crucial point of the article was that of the passing of property and that the concept of an extinction and arising of rights was neither necessary nor desirable in the context nor even legally correct.

3. In conclusion, he said that he was ready to accept the compromise idea put forward at the previous meeting by the delegation of Argentina.

4. Mr. RASSOL''KO (Byelorussian Soviet Socialist Republic) said that the International Law Commission's draft embodied two important provisions, one concerning the predecessor State and the other concerning the successor State. The provision that a succession of States entailed the extinction of the rights of the predecessor State and the arising of the rights of the successor State represented the main thesis of the article. The idea that a kind of vacuum might occur between the extinction of the rights of the predecessor State and the arising of those of the successor State was without substance, as the successor State's rights to State property arose immediately upon the extinction of the predecessor State's rights to such property.

5. Referring to the amendment submitted by the Federal Republic of Germany (A/CONF.117/C.1/L.3), he agreed with previous speakers who had pointed out that the concept which it sought to introduce was unjustified and unnecessary. Only those rights which the predecessor State had owned could be extinguished and only those same rights could arise for the successor State. There was no such thing as half-rights and to speak of the extent to which rights were owned—as was proposed in the amendment—was wrong in law. For that reason his delegation was unable to support the amendment submitted by the Federal Republic of Germany.

6. As far as the Greek delegation's amendment was concerned he said that it altered the contents of the International Law Commission's draft by introducing a reference to article 8 and also by failing to refer to the extinction and arising of rights, which as he had pointed out, was the crux of the article. For those reasons, he was unable to accept either of the amendments and fully supported the Commission's text.

7. Mr. MONCEF BENOUNICHE (Algeria) proposed an oral amendment which, he hoped, would reconcile the International Law Commission's draft with the amendment proposed by Greece. The Algerian amendment, which would affect both the title and the text of article 9, would read:

> "*Article 9* (Effects of the succession of States on State property)
>
> "1. A succession of States has the effect of making the property of the predecessor State pass to the successor State in accordance with the provisions of the present Part.
>
> "2. A succession of States entails the extinction of the rights of the predecessor State and the arising of those of the successor State to such of the State property as passes to the successor State."

8. The effects of the succession of States were twofold. First, there was the physical process of the passing of State property from the predecessor State to the successor State; and, second, there was the legal content of the passing of rights. Both aspects should be reflected in the proposed international convention, and that was what his amendment was designed to achieve. A further advantage of the suggested text was that it specified that the rights of the successor State were not conditioned by those of the predecessor State. Contrary to what some previous speakers had said, the point was not merely a metaphysical but also a practical one.

9. Mr. KOLOMA (Mozambique) said that although, according to generally accepted drafting rules, the title of an article did not form part of the law itself, it nevertheless showed the legislator's intention in connection with the article in question. The title of article 9 clearly showed that the International Law Commission intended the subject of the article to be the effects of the

passing of State property. The Greek amendment dealt with the substantially different matter of the effect of the succession of States on State property. According to the amendment, that effect consisted of the passing of the State property of the predecessor State to the successor State. That was, of course, entirely correct, but in his view it was not the point at issue in article 9, which was concerned, rather, with the "effects of the passing of State property" in the case of succession. Thus the Greek amendment was inconsistent with the title of the article and, consequently, with the intention of its drafters in the International Law Commission. Moreover, the legal effects of the passing of State property should be reflected on both sides to the process, meaning both the predecessor and the successor States. The Commission's draft defined those effects with precision and accuracy. As for the principle of continuity which many previous speakers had mentioned and which he, too, was anxious to uphold, that principle was ensured by the fact that the object of both the rights that were extinguished and those that arose remained the same, namely, State property, which did not change in the process of passing.

10. Referring to the amendment proposed by the delegation of the Federal Republic of Germany, he agreed with the statement made by the representative of Algeria at the previous meeting to the effect that it implied the arising of property rights for the successor State and, at the same time, the prolongation of at least some property rights for the predecessor State. The proposed inclusion of the words "to the extent to which the predecessor State owned such rights" in article 9 might jeopardize the successor State's exercise of its property rights. The complex legal and moral issues involved made it undesirable to incorporate such a provision in the proposed international convention. For all those reasons, his delegation could not accept either the Greek amendment or that proposed by the Federal Republic of Germany and fully supported the text drafted by the International Law Commission.

11. Mr. TEPAVITCHAROV (Bulgaria) said that, in his view, article 9 dealt only with the change in entitlement to State property which arose as the result of a succession of States and not with the passing of State property as such. It was quite obvious that a succession of States was not an ordinary transfer of rights or of State property. The wording proposed by the International Law Commission implied that what was involved was not a mere change of ownership but also an obligation on the predecessor State to transfer a clear title to such of the State property as passed to the successor State. Explanatory comments made by the Expert Consultant at the Committee's 6th meeting appeared to confirm that such had been the intention of the International Law Commission. Both amendments at present before the Committee departed from that intention. It would be at variance with the objectives and purposes of the proposed convention to provide the predecessor State with an excuse to transfer title to State property together with charges or obligations from which the predecessor State had benefited.

12. As for the problem of continuity, he considered that that was not a matter to be settled in article 9 since, upon a succession, the regime and nature of State property were to be determined by the domestic law of the successor State. The question as to what State property passed to the successor State, as well as that of the nature of the passing of such property, were dealt with elsewhere in the draft.

13. For all those reasons, he was unable to accept either of the amendments formally before the Committee and proposed that the International Law Commission's text, which he supported, should be referred to the Drafting Committee.

14. With reference to the oral amendment proposed by Algeria, he said that he would withhold comment pending its circulation in writing.

15. Mr. ECONOMIDES (Greece) thanked the representative of Algeria for his compromise proposal and suggested that it might be referred to the Drafting Committee.

16. Mr. OESTERHELT (Federal Republic of Germany) noted with satisfaction that almost all previous speakers had agreed that rights attaching to the object with which they related—rights *in rem*—remained valid irrespective of any change in the ownership of the territory concerned. That was an accepted rule of international law and was, *inter alia*, embodied in the 1978 Vienna Convention on the Succession of States in Respect of Treaties. The rule was supported by innumerable cases in State practice relating to the building of railways, the joint management of railway stations, the right to lay telegraph cables, rights of transit and the like. Inasmuch as such rights were considered to attach to the territory in question, the successor State honoured the obligations of the predecessor State. Furthermore, there was the question of secured State debts, in particular those specially secured by specific property, the borrowing State having in a sense mortgaged certain national assets. He referred in that connection to paragraph (37) of the commentary of the International Law Commission on article 31.

17. Three conclusions could be drawn from the draft before the Committee. First, it was legitimate to consider that article 9 left undisturbed the rights of third States attaching to the property which passed from one State to another upon a succession of States. That seemed to be the view prevailing in many statements made concerning article 9 and the amendment to it submitted by his delegation. Second, according to article 12, rights of a third State situated in the territory of the predecessor State would in principle remain unaffected by the succession as such. Lastly, article 34—although containing an important exception which would have to be debated at a later stage—pointed in the same direction by providing that the rights of creditors were not affected by a succession of States as such.

18. In order to shorten the discussion in the Committee and in the light of the foregoing considerations, his delegation would not be opposed to recommending that the Drafting Committee should take its amendment into consideration, leaving it to the Drafting Committee to try to give explicit expression to the general thought behind the amendment, as well as behind the French amendment to article 8 (A/CONF.117/C.1/L.5), which seemed to reflect a general understanding.

19. Mr. OBEID (Syrian Arab Republic) said that he would support the oral amendment submitted by the Algerian delegation.

20. Mr. PIRIS (France) welcomed the spirit of compromise at work in the Committee and, in particular, thanked the Algerian representative for his useful amendment. As a sub-amendment to paragraph 1 of that amendment, he suggested inserting the word "State" before the word "property". He also suggested amending paragraph 2 of the Algerian amendment to read:

> "In consequence of this, a succession of States entails the extinction of the rights of the predecessor State to such of the State property as passes to the successor State and the concomitant arising of identical rights of the successor State to the said property."

21. The object of those suggestions was self-evident. The introduction of the word "concomitant" would reconcile his delegation, and no doubt others, to the maintenance of the concept of extinction and arising of rights, while the reference to "identical rights" confirmed the point made by the Expert Consultant that there could be no passing of rights except those that were owned.

22. The CHAIRMAN, while expressing appreciation of the efforts being made to achieve a compromise, appealed to delegations to submit their proposals in writing.

23. Mrs. OLIVEROS (Argentina) endorsed the proposals of the Algerian and French representatives.

24. Mr. HAWAS (Egypt) said that, while he was grateful to the Algerian representative for his efforts to draft a compromise formula, he supported article 9 as it stood, for it already contained all the necessary elements. Moreover, its scope was specified in article 7, which stated that "The articles in the present Part apply to the effects of a succession of States in respect of State property". The article should be adopted as it stood and the different formulations proposed should be referred to the Drafting Committee for consideration.

25. Mr. AL-NASER ALMUBARAK (Saudi Arabia) supported the Algerian proposal.

26. Mr. DJORDJEVIĆ (Yugoslavia) supported the Egyptian proposal.

27. Mr. BEDJAOUI (Expert Consultant) said that the intention of the International Law Commission in drafting article 9 had been to adopt a wording which conveyed well the automatic nature of the operation. That was what was reflected in its choice of the word "entails". The idea had been to indicate that State succession was a legal process without a pause in the titularity of a right to property.

28. The Commission had also discussed the question of continuity in connection with the rights of the successor State to property and whether the rights passed from the predecessor to the successor State. The legal nature of the succession of States in international law differed from the succession to rights in private law. In a sale, the purchaser replaced the seller and exercised the rights attaching to the property sold. There were two possible readings of the concept of the exercise of a right by a successor in place of a predecessor State. The problem was whether the rights, even though they might have exactly the same content as those of the predecessor State, were proper to the successor State. The point was perhaps metaphysical, but successor States considered—which, moreover, was sound doctrine—that the rights to property that they exercised derived from their sovereignty, not from a transfer of the rights of the predecessor State. The latter became extinct. They did not pass to the successor State. At the same moment, those of the successor arose.

29. In a case where a successor State exercised wider rights over the property that opportunity would be given to it not by the succession of States as such but by another branch of international law. It was quite clear from article 9 that the successor State could not exercise more extensive rights than those previously vested in the predecessor State.

30. It had been pointed out that the words "arising" and "extinction" in connection with property might be contradictory, since the former evoked the idea of continuity and the latter that of discontinuity. To obviate any difficulty, he agreed with the suggestion that the word "arising" might be qualified by an adjective such as "concomitant", "instantaneous" or "simultaneous".

31. Many speakers had expressed the fear that a successor State might seize property other than that which had belonged to the predecessor State, for example, property of a third State or of private persons. He pointed out however that the definition in article 8 made it clear that the property of third States or of private persons was not covered by article 9, which dealt only with State property of the predecessor State. Moreover articles 6, 12 and 34 were safeguard clauses and would ensure that article 9 would not give rise to improper interpretations.

32. Finally he reminded the Committee that, if article 9 were to be changed, articles 20 and 32 would have to be amended consequentially.

33. The CHAIRMAN pointed out that, according to rule 47, paragraph 2, of the rules of procedure, it was the function of the Drafting Committee to co-ordinate and review the drafting of all texts adopted. Thus the Committee of the Whole would first have to adopt any texts it wished to refer to the Drafting Committee.

34. Mr. FREELAND (United Kingdom), in the light of the Algerian proposal and the explanations of the Expert Consultant, said that his delegation had been in favour of a much simpler approach to article 9, on the lines of the Greek amendment or, failing that, on those of the amendments proposed by the representative of the Federal Republic of Germany. However, the Algerian proposal, which was clearly intended as an effort to accommodate the views expressed, merited full consideration as a point of departure from which common ground might be reached.

35. His delegation agreed that the proposed change in the title of the article would bring it more closely into line with its content.

36. Paragraph 1 as proposed by Algeria, as amended by the French representative, was acceptable to his delegation.

37. As to paragraph 2, his delegation saw the reasons why the International Law Commission had preferred not to speak of a "transfer" and why it had tried to formulate the provision in neutral terms. However, his delegation doubted whether the Commission had succeeded and felt that the use of the word "entails" did not of itself meet the objective. If what was to be "entailed" was the extinction and arising of rights, the question arose whether the content of what was extinguished and what arose was exactly the same. His delegation's doubts were not fully allayed by the Algerian amendment because it retained the concept of the extinction and arising of rights. Perhaps a formulation such as "relinquishment" of rights and "vesting" or "assumption" of rights might be more genuinely neutral. His delegation had noted that the Expert Consultant would not be averse to the inclusion of a word such as "concomitant", and it saw merit in the word "identical" as suggested by the French delegation.

38. Article 9 was essentially concerned with proprietary rights on either side in the event of succession, but it had nothing to do with sovereign rights and their exercise by a successor State after the succession. In relation to the property that passed to the successor State, as indeed in relation to other property in the successor State, that State had sovereign rights that it could exercise in accordance with the relevant rules of international law; but article 9 did not deal with such rights.

39. Mr. MONNIER (Switzerland) said that the oral amendment proposed by Algeria, together with the French subamendment, appeared to cover the various concerns raised by delegations. Paragraph 1 of the amendment followed on the whole the amendment proposed by Greece whereas paragraph 2, as amended by France, echoed the provisions of the Commission's draft article 9 with the addition of the words "In consequence of this", "concomitant" and "identical". His delegation would be prepared, by way of compromise, to accept the proposal as contained in the Algerian amendment and improved by the French subamendment.

40. Mrs. BOKOR-SZOGÖ (Hungary) said that her delegation considered that article 9 did not require rewording and supported the original draft. She added that proposals and amendments should be dealt with in accordance with rules 28 and 47 in particular.

41. Mr. CHO (Republic of Korea) said that his delegation supported draft article 9 as it stood as being the most appropriate of the proposals before the Committee.

42. Mr. SUCHARIPA (Austria) said that the lengthy discussion to which article 9 had given rise was evidence of its importance, from both the theoretical and practical points of view. His delegation was able to support the Algerian oral amendment, especially as further amended by France.

43. Mr. MONCEF BENOUNICHE (Algeria), in reply to a request for clarification by Mr. TEPAVITCHAROV (Bulgaria), said that, in view of support expressed for its oral amendment, his delegation would submit it in writing. As the representative for Switzerland had pointed out, paragraph 2 of the amendment was based largely on existing article 9, and it might therefore be possible to reach an immediate decision on that provision. His delegation would submit a formal amendment on the basis of paragraph 1 of its oral proposal, in the form of a new article to be inserted immediately before existing article 9.[1]

44. Mr. DALTON (United States of America) said that his delegation could accept the oral amendment proposed by Algeria, though it would prefer to see it in writing before coming to a decision.

45. The CHAIRMAN said that it should be borne in mind that, in addition to the draft article as it stood and the oral amendment proposed by Algeria as subamended by the French delegation, there were also proposals by the delegations of the Federal Republic of Germany and Greece to be considered.

46. Mr. MONNIER (Switzerland) proposed that no immediate decision should be taken on article 9 but that the Algerian and French delegations should be requested to submit the oral amendment and subamendment in writing and that a decision should then be reached without re-opening the discussion.

47. Mr. PIRIS (France) said that it was his understanding that the Algerian delegation had decided not to submit its amendment formally in the form in which it had been delivered orally. For its part, the French delegation, in a spirit of compromise, proposed to resubmit the text of the Algerian amendment as it had been subamended orally by France. It would submit that text in writing immediately.

48. Mr. NAHLIK (Poland) pointed out that any modification affecting article 9 would also have repercussions on proposed articles 20 and 32, which had virtually identical wording in respect of archives and debts. The Committee should make every effort to facilitate the task of the Drafting Committee by giving that Committee very clear directions.

49. After a procedural discussion in which Mr. MIKULKA (Czechoslovakia), Mr. MONCEF BENOUNICHE (Algeria), Mr. PIRIS (France), Mr. MAAS GEESTERANUS (Netherlands) and Mr. JOMARD (Iraq) took part, the CHAIRMAN proposed that further discussion on article 9 should be deferred pending the distribution in writing of the amendments proposed.

It was so agreed.

The meeting rose at 12.55 p.m.

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[1] Subsequently issued under the symbol A/CONF.117/C.1/L.22.

8th meeting

Monday, 7 March 1983, at 3.05 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 10 (Date of the passing of State property) (*continued*)*

1. Mr. ECONOMIDES (Greece), introducing his delegation's amendment to articles 10, 21 and 33 (A/CONF.117/C.1/L.4), said that it related to the structure of the convention and not to the substantive contents of the articles, which were almost identical and concerned State property, archives and debts respectively. In order to simplify the text, his delegation proposed that the proposed convention should include a single article covering those three elements. That article should be placed in the general provisions which related to the whole convention. With regard to the opening phrase, his delegation proposed that the words "agreed or decided", which had been the subject of some criticism, should be replaced by the more general and non-specific word "determined", which would cover all situations.

2. He could accept the Egyptian amendment to article 10 provided it was made clear that the phrase "the States concerned" referred only to those States involved in the succession and that the word "appropriate" qualifying "international body" was replaced by the word "competent".

3. He suggested that all questions relating to the structure of the proposed convention should be referred to the Drafting Committee.

4. Mr. HAWAS (Egypt), introducing his delegation's amendment to article 10 (A/CONF.117/C.1/L.17), said that it applied also to article 11 and to the similar articles 21 and 22. His delegation supported the principle enunciated in those articles, namely that the date of passing of State property and of State archives should be that of the succession of States and that the passing should take place without compensation. It was not opposed to providing latitude in the text for the States concerned to reach some other arrangement but such exceptions should be clearly identified and limited. The existing text might give rise to uncertainty as to who was to agree or take the decision. It appeared from paragraphs (3) and (4) of the International Law Commission's commentary on article 10 that the Commission had considered amplifying the term "agreed" by making reference to the predecessor State and the successor State but had decided against that proposal because of the possibility of a third State also being involved. Similarly, the Commission had not wished to specify by whom a decision might be taken. He believed that the Egyptian amendment dealt appropriately with both points, although the exact wording to be used might be left to the Drafting Committee. His delegation supported the Greek proposal to consolidate several more or less identical texts in a single article in Part I.

5. He drew attention to the fact that the situation might arise where one of the parties concerned was not a State but, for example, a national liberation movement. Without prejudice to the internationally recognized right of such a movement to negotiate the independence of a colonial territory, it would be necessary for the successor State to endorse the agreement reached. Failing that, as a safeguard for colonial countries, the general principle would apply.

6. Mr. MAAS GEESTERANUS (Netherlands) announced that his delegation had become a co-sponsor of the Egyptian amendment to articles 10 and 11 (A/CONF.117/C.1/L.17 and L.6), which limited the meaning of the phrase "agreed or decided" to those cases to which it was really intended to refer. As a matter of drafting, he suggested that the word "appropriate" in those amendments should be replaced by "competent". In his view, it would be preferable to take a decision on the Greek amendment at a later stage.

7. Mrs. THAKORE (India) said that the Greek proposal to consolidate articles 10, 21 and 33 in a single article in Part I was unacceptable to her delegation. The present arrangement had the avantage of making Parts II, III and IV of the convention self-contained and that would facilitate their practical application. Furthermore, the phrase "except as otherwise determined" was vague. The present expression, namely, "unless otherwise agreed or decided", was precise and underlined the residuary character of the provision in article 10.

8. The Egyptian amendment tended to make explicit what was implicit. It was of a drafting nature and could be referred to the Drafting Committee.

9. Mr. NATHAN (Israel) pointed out that articles 10, 21 and 33 were not the only group of articles with identical contents. Articles 9, 20 and 32 and articles 11 and 22 were in the same category. There was no reason for treating one group differently from the others and, if the Greek amendment was pressed to its logical conclusion, it would have the effect of overloading the general provisions. It would also have practical disadvantages; it was an elementary principle of treaty drafting that, in accordance with the 1969 Vienna Convention on the Law of Treaties,[1] a term should be inter-

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* Resumed from the 6th meeting.

[1] *Official Records of the United Nations Conference on the Law of Treaties, 1968 and 1969, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

preted in its context, which meant in the self-contained part in which it occurred. An identical term might have different implications in different parts. The present structure of the proposed convention should therefore be retained. However he had no objection to the Greek amendment being referred to the Drafting Committee, together with the Egyptian amendment.

10. Mr. TÜRK (Austria) said that the Greek amendment would result in a consolidation which his delegation favoured. Nevertheless having regard to other views which had been expressed, further discussion of such consolidation should be deferred until the Drafting Committee had considered the matter. In general, he supported the Egyptian amendment, but thought that it should perhaps incorporate some language such as had been suggested by the Greek representative, so that it would read ". . . determined by the States concerned or a competent international body . . .". That was a matter of drafting, however, which should be referred to the Drafting Committee.

11. Mr. do NASCIMENTO e SILVA (Brazil) said that his delegation would hesitate to accept either of the amendments submitted. He doubted whether the changes proposed were merely a matter of drafting and, unless the Committee of the Whole agreed that they were, they should not be referred to the Drafting Committee until the Committee of the Whole had taken a decision on them. The consolidation of several articles into a single article in Part I would run counter to the philosophy of the proposed convention, which called for each part to be self-contained. The other change suggested by the Greek amendment aimed at replacing a generally accepted phrase, "agreed or decided", that appeared in the 1969 Vienna Convention on the Law of Treaties, an instrument which had entered into force. He took the same view regarding the Egyptian proposal to amplify that phrase. Such amplification was unnecessary for it was difficult to imagine that agreement could relate to States not concerned in the succession. The word "decided" was satisfactory without any qualification.

12. Mr. LEHMANN (Denmark) supported the Greek amendment with regard to the structure of the convention. The Drafting Committee might usefully consider a similar solution in other cases as well. He had no strong views regarding the language to be employed. The Egyptian amendment perhaps conveyed the meaning more precisely, but "competent" would be preferable to "appropriate".

13. Mr. PIRIS (France) said that his delegation took a flexible position on the Greek proposal to consolidate several articles. It wished to ascertain the general view of the Committee of the Whole. It was inclined to favour the Egyptian amendment, which explicated the International Law Commission's text. It interpreted "States concerned" to mean the predecessor State and the successor State. In his view it was obvious that the "appropriate" international body must be competent since it was a question of a body competent to hand down mandatory decisions for the parties concerned.

14. Mr. OESTERHELT (Federal Republic of Germany) said that, on the understanding that the word "decided" implied a decision binding on the parties concerned, either as a result of the jurisdiction of the International Court of Justice or by virtue of bilateral or multilateral contractual obligations, his delegation would support the International Law Commission's text. The Egyptian amendment brought the text closer to what his delegation felt the article should provide. However, his delegation would prefer the word "competent" to "appropriate".

15. Mr. FREELAND (United Kingdom) said that it would be premature to take an immediate decision on the Greek proposal to consolidate into one single article articles appearing in three different parts of the proposed convention. His delegation hesitated to accept the word "determined", which seemed more likely to refer to a decision by some international body than to agreement between the parties. Both cases should be clearly provided for in the text. The wording proposed in the Egyptian amendment was helpful, but it would be desirable to make the formulation still more precise by substituting "agreed by the predecessor and successor States" for "agreed by the States concerned" and the word "competent" for "appropriate".

16. Mr. NAHLIK (Poland) said that approval of the consolidation proposed in the Greek amendment would necessitate taking a similar decision on at least three other groups of articles. That would have the effect of leaving very little in section 1 of Parts II, III and IV of the proposed convention. It would be premature to decide on such a course at the present stage. The word "determined" was ambiguous—care must be taken to select a term with the same implications in all languages. He could accept the Egyptian amendment which clarified the text.

17. Mr. ECONOMIDES (Greece) said that his delegation withdrew its amendment (A/CONF.117/C.1/L.4), which had been intended to draw attention to the fact that there were in the various parts of the proposed convention a number of more or less identical articles which should more properly appear in the general provisions. He hoped that that important question might be further considered at a later stage.

18. Mr. BINTOU'A-TSHIABOLA (Zaire) wondered whether an "appropriate international body" had the same meaning in law as "a competent international body". If it had, then he could support the Egyptian proposal.

19. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation fully supported the International Law Commission's draft. He wondered whether the representative of Egypt or the Expert Consultant could explain the intention behind Egypt's proposed amendment. That the International Law Commission had been aware of the problems that Egypt appeared to be attempting to solve was quite clear from paragraph 3 of its commentary. Some members of the Commission had suggested the inclusion in the article of the words "between the predecessor State and the successor State" but the Commission had decided not to add those words. He wondered therefore whether a case might arise in which parties other than a predecessor and successor State might be involved, such as a third State on whose territory the State property in question was situated. With regard to the second part of the pro-

vision, he also wondered whether it would not be sufficient to refer simply to a "competent body" since a case could be envisaged in which another body, such as a national body, made the decision, as in the case of arbitration, for example.

20. Mr. MIKULKA (Czechoslovakia) said that his delegation appreciated the withdrawal of the Greek amendment, because it was, in its view, somewhat premature to decide to combine several articles into one. His delegation welcomed Egypt's efforts to clarify the text, but wondered whether the changes proposed by that delegation were really necessary. It seemed to be generally agreed that the date of the passing of State property was a matter for agreement between the States concerned and he doubted that it was necessary to be more specific. Some delegations had favoured a specific reference to agreement between the predecessor and the successor States, but there were also cases where only successor States were concerned. Furthermore, it seemed to be agreed that the word "decided" would generally refer to a decision by a competent international body but again he wondered whether it was necessary to say so explicitly. It might be useful for the Committee to have an explanation as to why the International Law Commission had not used the same expression as it had done in the 1978 Vienna Convention on Succession of States in Respect of Treaties[2] in a similar case, where one found the expression "unless . . . otherwise agree", or the expression "or . . . it . . . is otherwise established".

21. Mr. BEDJAOUI (Expert Consultant) said that article 10 was one of a number of articles containing the phrase under discussion. The International Law Commission had intended to include in article 10 a rule, which was basically a residuary provision, that would allow States themselves to settle that aspect of the succession of States to which the article referred, leaving the possibility open for other forms of settlement by agreement. The Commission had in fact used several different expressions, as the representative of Czechoslovakia had observed, but the cases concerned were not the same and the Commission had varied its wording according to the degree of precision it had considered possible.

22. He saw difficulty in being more precise than the Commission had been in its text by referring to "an appropriate international body". He personally favoured the Commission's policy of providing for every possible type of agreement or decision without going into specifics.

23. Mr. HAWAS (Egypt) thanked the Greek delegation for having withdrawn its proposal.

24. His delegation emphasized that the amendment it had proposed was in line with the general thinking of the International Law Commission. It has merely sought to improve the Commission's text by adding what it considered to be lacking. With regard to the first part of its proposal, "unless agreed by the States concerned . . .", paragraph (3) of the International Law Commission's commentary mentioned that in practice the States concerned sometimes agreed to choose a date for the passing of State property other than that of the succession of States. His delegation's proposal in no way conflicted with that idea. It provided a form of wording which made it unnecessary to specify that the agreement should be between the predecessor and the successor States and opened the way for a number of States, if necessary, to agree. The provision would then be strengthened by other articles in the proposed convention, such as articles 16 and 17. His delegation did not favour providing for the case of an agreement between a State, on the one hand, and a different kind of entity, such as a local government or a liberation movement, on the other. Its main concern had been to make that clear in the text.

25. As for the phrase "decided by an appropriate international body", the intention there had been to eliminate any idea that a unilateral decision as to the date of the succession or on the matter of compensation could be imposed by the predecessor State. If disputes were to be avoided, the decision should be taken by an appropriate international body. No attempt had been made to list obvious examples, since the choice of that body would be a matter for future generations. The text as drafted by the International Law Commission could only give rise to uncertainty and even to serious complications in the future.

26. Mr. SUCHARITKUL (Thailand) said that his delegation welcomed the Egyptian amendment and the explanations given by the Expert Consultant. Like the Expert Consultant, he believed that the International Law Commission's formula provided maximum flexibility and a balanced approach, since it covered many different situations and varying circumstances.

27. Mr. LAMAMRA (Algeria) said that at the outset his delegation had had no definitive view on the significance and scope of the Egyptian proposal but the discussion and the useful explanation by the representative of Egypt had led it to conclude that the amendment presented few advantages.

28. Paragraphs 3 and 4 of the International Law Commission's commentary on article 10 were useful in explaining the reasons which had led the Commission to draft the text as it had done. Having weighed all the arguments, his delegation had concluded that the Commission's decision had been a wise one and that any addition to the article would only lead to conflicting interpretations. The Commission's wording had a further advantage which would be lost if the Egyptian amendment were adopted, namely flexibility, since Egypt's intention was to exclude agreements between international liberation movements and predecessor States. His delegation saw no reason for such a restriction, particularly as the likelihood of such a case arising was considerable.

29. He hoped, therefore, that the Egyptian delegation would reconsider its proposal. His delegation greatly appreciated the Egyptian delegation's efforts, however, as well as those of the Greek delegation, whose main concern had been the structure of the convention. That concern was quite justified and he hoped that the Drafting Committee or a small group appointed by the

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[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

Chairman might consider the structure of the conven-ion and make suitable recommendations to the Committee of the Whole at a later stage. Prolonged discussion of questions of presentation could thus be avoided.

30. Mr. HAWAS (Egypt) confirmed that the purpose of his delegation's amendment to article 10 was to introduce an element of restriction into what were, after all, exceptions. His delegation still felt that the wording in the International Law Commission's draft article was too broad. If, however, having heard the explanation given by the Expert Consultant, the Committee was satisfied that the Commission's draft article excluded the possibility of a decision being taken unilaterally or agreement being reached between parties other than the States concerned, his delegation would not press for a vote on its amendment. It would instead request that that proposal be referred to the Drafting Committee. He noted that, in his explanation, the Expert Consultant had made it clear that the International Law Commission was not opposed to the substance of the Egyptian amendment.

31. Mr. MAAS GEESTERANUS (Netherlands) observed that general appreciation had been expressed for the amendment to article 10 proposed by the delegations of Egypt and the Netherlands. Indeed, the tenor of the suggestion made by the United Kingdom delegation had been that the working of article 10 should be tightened up even further. Given the general agreement on the need to amend article 10, the only point at issue was the exact formulation of such an amendment. He therefore agreed with the representative of Egypt that the matter should be referred to the Drafting Committee.

32. Mrs. OLIVEROS (Argentina) agreed with the thrust of the amendment submitted by Egypt and the Netherlands and also supported the idea advanced by the United Kingdom delegation. The amendment should be referred to the Drafting Committee which should also take into account the desirability of reversing the order of the elements in the draft article. Thus, the rule that the date of the passing of State property was that of the succession of States, should precede the exception to that rule.

33. Mr. DALTON (United States of America) said that his delegation viewed the proposal in document A/CONF.117/C.1/L.17 as a clear drafting improvement which should be sent to the Drafting Committee for possible reformulation.

34. Mr. MONCEF BENOUNICHE (Algeria) said that the Committee of the Whole should take a decision on the substance of the proposal before referring it to the Drafting Committee.

35. Mr. ASSI (Lebanon) supported that view.

36. Mr. JOMARD (Iraq) said that the first step to be taken, before deciding how to proceed further, was to determine whether or not there was consensus on the substance of the proposal.

37. The CHAIRMAN said that there did not appear to be a consensus in the Committee on referral of the proposal to the Drafting Committee. He therefore believed that a vote should be taken on the matter in order to ascertain whether there was agreement on the substance. He drew attention to the fact that, under rule 47, paragraph 2, of the rules of procedure of the Conference, the Drafting Committee was responsible for co-ordinating and reviewing the drafting of texts once they had been adopted.

38. Mr. MURAKAMI (Japan) considered that a vote on each article would be premature at the current stage, when the general picture of the convention as a whole was not yet clear.

39. Mr. ECONOMIDES (Greece) supported by Mr. LEHMANN (Denmark) and Mrs. BOKOR-SZEGÖ (Hungary), proposed that the Committee should first decide whether the amendment concerned a point of drafting or one of substance.

40. Mr. BEDJAOUI (Expert Consultant) said that, if the Committee were to vote on the proposal, it would be pertinent to bear in mind that cases had occurred where national courts had ruled in respect of property located outside the successor State and where their ruling had been accepted by the successor State. The possible involvement of national bodies should therefore also be borne in mind.

41. Mr. MONNIER (Switzerland) noted that the sponsors of the amendment were not pressing for a vote and that the Argentine representative's proposal was purely a matter of drafting which could be taken up by the Drafting Committee. The Committee of the Whole should therefore take a decision on the draft submitted by the International Law Commission and refer it, if adopted, to the Drafting Committee, leaving it to that Committee to take into account the views expressed.

42. Mr. HAWAS (Egypt), referring to the explanation just given by the Expert Consultant, said that his delegation did not agree with the concept of rulings by foreign courts being covered by article 10. The Expert Consultant's statement reinforced his delegation's concern that article 10 as it stood was too broad and thus gave rise to differing interpretations.

43. Mr. MURAKAMI (Japan) recalled that a similar case had arisen during the United Nations Conference on Succession of States in Respect of Treaties. On that occasion the Committee of the Whole had decided to refer a draft article of the International Law Commission to the Drafting Committee, together with an amendment to the article as a drafting suggestion. He proposed that that precedent should be followed in the present instance.

44. The CHAIRMAN invited the Committee to vote on article 10.

45. Mrs. BOKOR-SZEGÖ (Hungary), supported by Mr. JOMARD (Iraq), pointed out that a vote had already been requested on whether the amendment in document A/CONF.117/C.1/L.17 was a matter of drafting or one of substance; in accordance with the rules of procedure that question should in their view be voted upon first.

The meeting rose at 6.05 p.m.

9th meeting

Tuesday, 8 March 1983, at 10.10 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Organization of work

1. The CHAIRMAN drew attention to document A/CONF.117/9 and, in particular, to paragraph 17, which stated that the Committee would have at its disposal a maximum of 44 meetings to deal with the draft articles prepared by the International Law Commission, and to annex I.B of that document which outlined the schedule of work. The Committee had not as yet completed consideration of the first group of articles (articles 7 to 12), on which discussion was to have been concluded before 4 March. He urged the Committee to accelerate its progress in order to be sure of meeting the deadline of 31 March envisaged for the conclusion of its work. It was also essential that articles should be referred to the Drafting Committee with clear instructions.

2. Mr. NAHLIK (Poland) said that it would save time if the Chairman were to close the list of speakers on a particular topic when a situation arose in which many speakers had already raised much the same points.

3. The CHAIRMAN took note of the suggestion.

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4; A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 10 (Date of the passing of State property) (*concluded*)

4. Mr. HAWAS (Egypt) said that his delegation had hoped that its proposed amendment, (A/CONF.117/C.1/L.17) would be adopted without a vote and referred to the Drafting Committee. However, after consultations with many delegations, he had decided to ask for a vote on the amendment, whose purpose was to make as clear as possible the necessary exception to the general rule contained in the draft article. The substance of the article was not in question.

5. Mr. MUCHUI (Kenya) said that his delegation wished to become a co-sponsor of the amendment proposed by Egypt. He did not feel that the exception thus provided for in any way altered the intended scope of the article.

6. Mr. SUCHARITKUL (Thailand) said that the Egyptian amendment had the disadvantage that it introduced elements of ambiguity into the text. The "States concerned", as referred to in the amendment, might be predecessor, successor or third States, a combination of such States, or even a single State: as the Expert Consultant had pointed out at the preceding meeting, it was extremely difficult to be precise when there were several possible cases of succession.

7. Similarly, if the amendment had referred simply to an "appropriate body" no ambiguity would have arisen but the introduction of the expression "an appropriate international body" left considerable room for interpretation. He noted that the Commission's draft articles on the law of treaties between States and international organizations or between international organizations,[1] in article 2 on use of terms, defined an "international organization" as an intergovernmental organization, thus excluding, for example, multinational corporations. However, if understood in that sense, the expression "appropriate international body" would also exclude such possible arbitrators as the Pope, a reigning monarch or the Permanent Court of Arbitration. The Egyptian amendment, by using the expression "States concerned", would have the further effect of failing to cover the case of the dissolution of a sovereign State as, for example, in the cases of the United Arab Republic or Malaya.

8. Obviously the draft articles could not cover every contingency and the Commission had clearly realized that fact when drafting article 10.

9. Mr. ECONOMIDES (Greece) said that he agreed with the views of the previous speaker and with those expressed by the Expert Consultant at the preceding meeting. He asked whether the term "an appropriate international body" was intended to mean a body competent under international law, a category which might, for example, include a Head of State acting in pursuance of international law.

10. Mr. A. BIN DAAR (United Arab Emirates) suggested that some difficulties might be eliminated if the representative of Egypt were prepared to revise his amendment so that the last phrase would read "unless otherwise agreed by the parties to the succession of States or decided by an appropriate national or international body".

11. Mr. HAWAS (Egypt), referring to the statement by the representative of Thailand, said that he had taken into account the possibility that the parties to a succession of States might resort to arbitration: in that event the arbitral award would be binding upon them.

12. In reply to other comments on his delegation's amendment he said that, while a national judicial body had competence in its own country, it was inconceivable that a unilateral court decision taken in a predecessor State could be binding on an independent successor State. It was important not to over-extend the scope of article 10.

13. In conclusion, he said that he could not accept the wording proposed by the delegation of the United Arab Emirates, which did not provide for the kind of limitation his amendment had been intended to introduce.

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[1] See *Official Records of the General Assembly, Thirty-seventh session, Supplement No. 10* (A/37/10), chap. II, sect. D.

14. The CHAIRMAN invited the Committee to vote on the amendment proposed by Egypt and co-sponsored by the Netherlands and Kenya (A/CONF.117/C.1/L.17).

The amendment was adopted by 24 votes to 10, with 23 abstentions.

15. The CHAIRMAN invited the Committee to vote on article 10, as amended.

Article 10, as amended, was adopted by 44 votes to 4, with 12 abstentions, and referred to the Drafting Committee.

16. Mr. OESTERHELT (Federal Republic of Germany) said that, although he would have preferred the term "competent" to the term "appropriate", he had voted in favour of the amendment and of the text of article 10 as amended. He interpreted the amendment as referring to decisions which were binding upon the parties to the succession of States.

17. Mr. SUCHARIPA (Austria) said that he, too, had voted in favour of the amendment and of the article as amended, but would have preferred the use of the word "competent".

18. Mr. PIRIS (France) said that he had voted in favour of the amendment which, in his view, satisfied the points raised by the representatives of Greece, the United Arab Emirates and Thailand.

Article 11 (Passing of State property without compensation) (*concluded*)*

19. Mr. HALTTUNEN (Finland) proposed that the word "from" between the words "property" and "the" should be replaced by the word "of". The proposed amendment might be regarded as a drafting change, but he personally felt that a point of substance was involved. The purpose of the amendment was to make it clear that State property passing from the predecessor State to the successor State was indeed the property of the predecessor State and not of a third State.

20. Mr. HAWAS (Egypt), introducing his delegation's amendment (A/CONF.117/C.1/L.6), of which the Netherlands had become a co-sponsor, said that the amendment was in line with, and based on the same logic as, the amendment to article 10 which the Committee had just adopted.

21. Mr. do NASCIMENTO e SILVA (Brazil) said that, as he had stated at the Committee's 3rd meeting, he would prefer article 11 to remain as it stood. In view of the adoption of the amendment (A/CONF.117/C.1/L.17) to article 10, however, he now felt that article 11 should be amended in a similar manner.

22. With regard to the amendment just proposed orally by the representative of Finland, he said that he would have no objection to its being referred to the Drafting Committee, but so far as discussion in the Committee of the Whole was concerned, the provisions of rule 28 should apply.

23. Mr. USHAKOV (Union of Soviet Socialist Republics) said that the Committee's adoption of the amendment to article 10 should be considered tantamount to the adoption of a like amendment to all other articles of the draft in which the phrase "unless otherwise agreed or decided" occurred. Inconsistency in that respect would disturb the structure of the draft as a whole. The precise rendering of the words "international body" in Russian and, possibly, also in French, might, however, require further thought.

24. Mr. MUCHUI (Kenya) agreed that the adoption of the amendment to article 10 would automatically entail a similar change in all other articles of the draft containing the words "unless otherwise agreed or decided". He announced that his delegation co-sponsored the amendment in document A/CONF.117/C.1/L.6.

25. Mr. MONNIER (Switzerland) pointed out that the oral amendment suggested by the representative of Finland, which did not affect the French text, involved only a drafting point and might be referred to the Drafting Committee.

26. With regard to the amendment co-sponsored by Egypt, the Netherlands and Kenya, he appreciated the point made by the representative of the Soviet Union but felt that an amendment which had been formally submitted called for a separate decision. In general, he was not in favour of incorporating the wording adopted in respect of article 10 automatically in all other articles of the draft which contained the phrase in question; the specific legal context should be taken into consideration in each case.

27. Mr. JOMARD (Iraq) said that he fully agreed with the last speaker that an automatic approach should be avoided. The issue might perhaps be referred to the Drafting Committee.

28. Mr. PIRIS (France) agreed with the representatives of Switzerland and Iraq that the amendment to article 11 should form the subject of a separate vote. He further agreed that the Finnish oral amendment should be referred to the Drafting Committee. So far as the application of rule 28 was concerned, he felt that a certain degree of flexibility was in order.

29. Mr. MONCEF BENOUNICHE (Algeria) said that he basically agreed with the Soviet representative. He suggested that the Secretariat might be requested to produce a paper identifying all those articles in the draft containing the phrase "unless otherwise agreed or decided".

30. Mr. HAWAS (Egypt) pointed out that the International Law Commission's commentary on articles 11, 21, 22 and 33 made it quite clear that the purpose of the phrase in question was identical with that of the corresponding clause in article 10.

31. Mr. OWOEYE (Nigeria), while agreeing with the idea underlying the amendment, was of the opinion that it should be considered on its own merits, as should be similar amendments to other articles in the draft. A comment by the Expert Consultant would be helpful in that connection.

32. Mr. BEDJAOUI (Expert Consultant) said that wherever the same expression appeared in the draft, consistency did indeed demand an amendment such as had been adopted in respect of article 10. However, that

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* Resumed from the 6th meeting.

comment applied only to those articles where the form of words employed was exactly the same as in the original article 10.

33. The CHAIRMAN suggested that, in the absence of any objection, the amendment to article 11 contained in document A/CONF.117/C.1/L.6 should be considered adopted.

It was so decided.

Article 11, as amended, was adopted and referred to the Drafting Committee.

34. The CHAIRMAN suggested that the oral amendment proposed by Finland should be referred to the Drafting Committee.

It was so decided.

Article 12 (Absence of effect of a succession of States on the property of a third State) (*concluded*)*

35. The CHAIRMAN suggested that, in the absence of further discussion, article 12 should be adopted without a vote and referred to the Drafting Committee.

It was so decided.

36. Mr. HAWAS (Egypt) said that his delegation had agreed to the adoption of article 12 in the light of the explanations given by the Expert Consultant, especially as regards the phrase "according to the internal law of the predecessor State".

Article 9 (Effects of the passing of State property) (*continued*)**

New article 8 bis (Passing of State property)

37. The CHAIRMAN invited the Committee to consider, in addition to the International Law Commission's draft, the amendments to article 9 submitted by the Federal Republic of Germany (A/CONF.117/C.1/L.3), Greece (A/CONF.117/C.1/L.7) and France (A/CONF.117/C.1/L.21), as well as the amendment by Algeria involving the addition of a new article 8 *bis* (A/CONF.117/C.1/L.22).

38. Mr. PIRIS (France), introducing his delegation's amendment (A/CONF.117/C.1/L.21), said that it was exactly the same as the oral amendment submitted at the 7th meeting by Algeria, as orally subamended by the French delegation at the same meeting. The amendment reproduced those oral proposals and merged them. His only aim was to assist the Committee in its efforts to achieve a compromise. Paragraph 1 of the amendment just about corresponded to the text of the Greek delegation's amendment which was also reflected in the new article 8 *bis* proposed by Algeria. Paragraph 2, which was proposed in a spirit of compromise although the French delegation continued to be unconvinced of its necessity, reproduced the International Law Commission's draft with some slight additions, in particular the addition of the words "concomitant" and "identical", which were intended to make the text more explicit. If the Committee preferred, the word "concomitant" could be replaced by some other term such as "simultaneous" or "instantaneous", as suggested by the Expert Consultant. Lastly, it was proposed that the title of article 9 should be amended to read "Effects of the succession of States on State property", as had been suggested by the Algerian delegation at the 7th meeting.

39. He pointed out that, in the Spanish version of paragraph 1 of his delegation's amendment, the words "*de Estado*" should be added after the word "*bienes*". The title of the amendment should also be corrected.

40. Mr. USHAKOV (Union of Soviet Socialist Republics) said he appreciated the efforts of the Algerian and French delegations, in proposing their respective amendments, to reconcile the divergent views within the Committee. However, in his view, both the Algerian proposal and paragraph 1 of the French amendment conflicted with the fundamental meaning of the text proposed by the International Law Commission for article 9.

41. As was clear from its title, the purport of article 9 in the Commission's draft was to spell out the effects of the passing of State property in the event of a succession of States. The need for such a definition was evident for, as the Expert Consultant had said, the terms "pass" and "passing" had no accepted juridical meaning. Their connotations were twofold: first, in a physical sense, the transfer or passing of certain material items, including immovable property with a fixed geographical location; and, second, the juridical consequences of that transfer, namely, the termination or extinction of the rights of the predecessor State to the property in question under international law and the simultaneous arising of identical rights for the successor State. That those two elements were of simultaneous effect was beyond question, for to envisage any delay occurring between them would be to place an absurd interpretation on the draft article. A further vital question arose: did the whole of the State property of the predecessor State pass, or only a part thereof? It was plain that what passed was only that property which passed in accordance with the provisions of the articles of Part II; only in the exceptional case provided for in article 15, where two or more States united, did the resultant successor State acquire the whole of the State property of the predecessor State.

42. By contrast, both the French amendment to article 9 and the Algerian proposal for a new article 8 *bis* quite incorrectly implied that what passed was the whole of the State property of the predecessor State; the phrase "in accordance with the provisions of the articles in the present Part" in the Algerian text seemed not so much to limit the extent of the property concerned as to qualify the word "pass". He pointed out in that connection that the amendments used the definite article when referring to "*the* State property of the predecessor State". That wording appeared to be based on the amendment of Greece to article 9, but with the omission of the words "as defined in article 8" which, in the Greek amendment, qualified the property of the predecessor State. Even had that phrase been retained, however, the inference to be drawn from the Algerian and French amendments that they meant to refer to the whole of such property was almost inescapable, since article 8 gave only a general definition of the meaning of "State property".

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* Resumed from the 5th meeting.

** Resumed from the 7th meeting.

43. Paragraph 2 of the French delegation's amendment likewise failed to specify exactly the scope of the expression "the State property". In addition, the stipulation that the rights acquired by the successor State were identical to those extinguished for the predecessor State was superfluous and inappropriate, since it was a principle exhaustively debated and unanimously accepted by the Committee that such property as passed did so with no loss of any of the charges and obligations attaching to it. It had been on that understanding, after all, that the same delegation had agreed, at the Committee's sixth meeting, not to insist on its amendment to similar effect in connection with article 8 (A/CONF.117/C.1/L.5).

44. For the reasons stated, the delegation of the USSR regarded both the French and the Algerian proposals as undesirable and would oppose them should they be put to a vote.

45. Mr. NATHAN (Israel) said that, with the exception of the provisions dealing with the specific case of newly independent States, where the draft applied the *tabula rasa* or "clean slate" rule, the operative provisions of all the relevant parts of the future convention as drafted by the Commission were based on the fundamental notion of continuity in a succession of States. He felt that in article 9 however the Commission had perhaps been less than fully faithful to that principle and he therefore welcomed the French amendment for the way in which it re-emphasized the element of continuity. The new title of the article, as proposed by France, also more accurately reflected the actual content and purport of the original draft. The amendment was therefore fully supported by his delegation.

46. Mrs. OLIVEROS (Argentina) said that, apart from the correction of the Spanish version of paragraph 1 of the French delegation's amendment, that amendment was acceptable to her delegation because it seemed to reflect the Commission's original thinking more faithfully than did the Commission's own draft article.

47. Mr. MONCEF BENOUNICHE (Algeria) said that his delegation's proposal for a new article 8 *bis* sought to introduce a logical element which was missing from the Commission's draft. It was based on the premise that there were two components to the phenomenon of passing, the first being that of transfer of property in a physical sense and the second the implications of that transfer, in terms of the extinction and arising of rights, for the predecessor and successor States. His delegation took the view that it was vital, as a first step, to establish the physical character of the passing of property, which would be the purpose of the new article 8 *bis*, and then to deduce the juridical effects of the passing in article 9.

48. The representative of the Soviet Union had raised the question whether all or part of the State property of the predecessor State was covered by the wording of the proposal. That point was in fact fully clarified by the proviso "in accordance with the provisions of the articles in the present Part", since articles 13 to 17 established a number of unambiguous criteria, such as the physical location of the property in the territory or the degree to which it was necessary to the administration of the territory, to be used in determining the extent and scope of the property which passed.

49. Mr. RASUL (Pakistan) noted that draft article 9 contained two elements. It spoke first of the passing of property and, second, of the effects of such passing. Both the French and the Algerian amendments before the Committee had the merit of separating those two elements, while the Commission's draft article covered them in only one sentence. There were three possible options open to the Committee: a single article treating both points in one paragraph; a single article divided into two paragraphs; or two independent articles. The Committee should give more thought to the relative merits of the three options.

50. His delegation welcomed the inclusion, in paragraph 2 of the French delegation's amendment, of the two useful adjectives "concomitant" and "identical", and noted that the Expert Consultant seemed to find those two words acceptable.

51. Mr. HAWAS (Egypt) said that his delegation considered that the text of article 9 as drafted by the Commission was perfectly satisfactory and covered all the concerns which had been voiced in the debate and reflected in the proposed amendments. The Commission's language had been carefully chosen and dealt effectively with the idea of the passing of State property and its implications, especially as the article should be construed in the light of earlier articles, particularly articles 7 and 8. It was very important to retain the elements of "extinction" and "arising" of rights, and his delegation was convinced that there was absolutely no implication of any gap or discontinuity in the process in article 9 as it stood. The French delegation's amendment did little more than emphasize elements which were already clearly understood, while possibly disturbing the structure of the entire draft and introducing new wording which might give rise to difficulties of interpretation. He would therefore prefer article 9 to be maintained as it stood in the Commission's draft.

52. Mrs. BOKOR-SZEGÖ (Hungary) said that both the title and the text of the French delegation's amendment were incompatible with the very concept of succession of States as proposed by the International Law Commission and as embodied in the 1978 Vienna Convention on Succession of States in Respect of Treaties.[2] The specific effects on State property of different cases of succession of States would be dealt with in the articles of Part I of the draft. The title and wording of article 9 should therefore be kept neutral, while describing adequately, in a general way, the effects of the passing of State property. The article as drafted by the Commission satisfied both those requirements and should be maintained.

53. Mr. ECONOMIDES (Greece) said that, since the substance of his delegation's amendment to article 9 was admirably covered by the French and Algerian amendments, he withdrew his delegation's amendment.

54. He particularly shared the view of the Algerian representative that it was vital to include a separate

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[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

provision on the primary effect of a succession of States on State property, namely, the physical phenomenon of passing. It would be a grave omission if the future convention failed to reflect that clearly.

55. With regard to the comments made by the representative of the Soviet Union, he felt it was clear that the amendments proposed by Algeria and France did not imply that the whole of the State property of the predecessor State would necessarily pass to the successor State, for those amendments contained the express stipulation "in accordance with the provisions of the articles in the present Part", and that Part included articles 13 to 17 which specified how and to what extent such property was affected in various different situations. He thought that merely a drafting point was involved which could be settled by the Drafting Committee.

56. Mr. OESTERHELT (Federal Republic of Germany) said that the French delegation's amendment was commendably clear, sound in law and necessary. Since it was based on the same thinking as his own delegation's amendment he was prepared to withdraw that amendment in the event that the French amendment carried.

57. Mr. MONNIER (Switzerland) said that, unlike the representative of Pakistan, he did not consider that the draft article, as prepared by the Commission, both laid down the rule and specified the effects of the passing of property. In his opinion, the rule as such was merely implicit in article 9; the term "passing" was used only in the title. The merit of the French and Algerian amendments was that they stated the rule expressly.

58. The arguments of the representative of the Soviet Union had not convinced him that there was any ambiguity in the way in which the expression "in accordance with the provisions of the articles in the present Part" was used in the French delegation's amendment; the expression had a generally understood meaning and the article as qualified by that expression could surely not be construed to mean that all the State property of the predecessor State invariably and necessarily passed to the successor State.

59. His delegation would therefore support the French delegation's amendment, which covered all the basic elements required and added a useful clarification in paragraph 2 through the use of the adjectives "concomitant" and "identical".

The meeting rose at 1 p.m.

10th meeting

Tuesday, 8 March 1983, at 3.05 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 9 (Effects of the passing of State property) (*concluded*)

New article 8 bis (Passing of State property) (*concluded*)

1. Mr. POEGGEL (German Democratic Republic) said that, in his view, the French amendment (A/CONF.117/C.1/L.21) was not sufficiently precise with regard to the effects of State succession on State property. The legal consequence of a succession of States was that both the sovereignty and the internal law of the predecessor State ceased to exist. At the same time, the successor State established its own legal order in the territory concerned, in particular in respect of the State property that had been owned by the predecessor State. The new State acquired that property in its own name and without any formal or specific act of transfer being performed or required. Accordingly, the concepts of a transfer or passing of State property as such from one State to another or of the arising of identical rights of the successor State did not exist.

2. His delegation therefore preferred the text of draft article 9 submitted by the International Law Commission, although it was not opposed to the Drafting Committee studying proposals designed to improve the formulation of the article.

3. Mr. LAMAMRA (Algeria) said that the proposed text for a new article 8 *bis* submitted by his delegation (A/CONF.117/C.1/L.22) should not be viewed as having a structural link with article 9 as drafted by the International Law Commission, or the amendments submitted thereto.

4. In submitting its amendment, his delegation has been prompted by a desire to bring together two divergent points of view. It was therefore disturbing to note that paragraph 1 of the amendments to article 9 submitted by France, which was identical with the new article proposed by Algeria, was still before the Committee.

5. Referring to paragraph 2 of the French amendment, he questioned the relevance of the concept of identical rights of successor States, which acquired the property by virtue of their own sovereignty. A succession of States entailed the extinction of the rights of the predecessor State: the rights of the successor State that arose could be identical, but might also be different. The French text would open the door to efforts by predecessor States to recover national wealth in accordance with the concept of acquired rights. His del-

egation therefore considered that adoption of the French amendment would cause more problems than it would solve.

6. Mr. RASUL (Pakistan) said that his delegation favoured separation of the two elements of the effects of the succession of States on State property and was therefore not fully satisfied with the existing text. He could not, however, agree that the principle of the passing of State property was covered, not by article 9 but by article 10 and subsequent articles: how could the effects of a phenomenon be dealt with before that phenomenon had itself been covered? Article 10 dealt with the date of the passing of State property, not the passing of State property as such.

7. In his delegation's view, the Algerian amendment should be dealt with before the French amendment, since it related to a provision which, if adopted, would precede article 9.

8. Mr. BOCAR LY (Senegal) said that, although his delegation had already expressed its support for the International Law Commission's text of article 10, it wished to comment on the amendments to that article which had since been submitted.

9. Referring to the French amendment, he said that his delegation would have difficulty in accepting the term "identical rights", which could have dangerous implications. The successor State was already restrained by a number of safeguards contained in articles 6, 12 and 24. Adoption of the French amendment would impose a further restriction on the successor State, particularly under private law.

10. He understood that the Algerian amendment had been submitted in a spirit of compromise: on that basis, his delegation would be prepared to accept it.

11. Mr. MAAS GEESTERANUS (Netherlands) noted that the French amendment was an attempt to combine the idea of continuity, which had been recognized as important by a number of delegations, with the original elements of the International Law Commission draft. The delegation of the Federal Republic of Germany had indicated that it was prepared to withdraw its amendment to article 9 (A/CONF.117/C.1/L.3) if the French proposal was acceptable to the Committee. The Netherlands delegation for its part was prepared to accept the French delegation's effort at compromise.

12. Mr. PHAM GIANG (Viet Nam) said that the variety of views which had been expressed showed the complexity of the question of the legal implications of the passing of State property.

13. Draft article 9, as proposed by the International Law Commission, dealt in a clear manner with the concept and effects of the passing of State property and his delegation favoured the retention of that text. However, it would be prepared to accept the Algerian amendment as a complement to the International Law Commission's draft, if other delegations deemed it essential to have a separate definition of the passing of State property.

14. Mr. MASUD (Observer for the Asian-African Legal Consultative Committee) said that, while the French and Algerian amendments to article 9 solved some problems, they created others. The concerns of the representative of France could, to a large extent, be taken care of by the use of the words "concomitant and identical rights" in the text proposed by the International Law Commission. He noted that the International Law Commission's draft made no reference to the question of obligations attaching to State property passing to a successor State.

15. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation had originally been prepared to accept the existing text of article 9 but the discussion of the French and Algerian amendments had highlighted certain problems. Although the existing article was satisfactory, he therefore considered that those amendments should be sent to the Drafting Committee for purposes of further clarification of the provision contained in the article.

16. Mr. TEPAVITCHAROV (Bulgaria) said that the French amendment was at the same time too vague and too selective. It was somewhat of a contradiction to have a general provision concerning the effect of the succession of States which dealt with only one element, namely State property, to the exclusion of the other two elements with which the draft convention was concerned, namely archives and debts.

17. It could be argued that paragraph 2 of the French amendment clarified paragraph 1, by making it clear that not all property of the predecessor State passed to the successor State. The limitative clause, however, was not linked to objective criteria or related to any article of the draft convention. The only link was between the rights of the predecessor State and those of the successor State. The French amendment could therefore not be accepted as generally applicable.

18. He found the Commission's text the most balanced and unambiguous. The suggestion by the Expert Consultant at the previous meeting that the word "concomitant" should be added before "arising" in that text would meet a concern voiced by a number of speakers and would be acceptable to his delegation.

19. Mr. FAYAD (Syrian Arab Republic) said that amplification of the provision in article 9 by way of explanation had the effect of complicating it: the International Law Commission's text was perfectly clear. Articles 7 and 8 already defined the State property that could pass. He agreed with the Expert Consultant that no legal vacuum existed in the case of a succession of States. His delegation therefore supported the retention of the International Law Commission's text.

20. Mr. SHASH (Egypt) also found the International Law Commission's text legally correct and therefore supported its retention. He could not accept the concept of identical rights which was referred to in the French amendment. The sovereignty of one State ended and the sovereignty of another arose. Continuity related more to a succession of Governments than to one of States. If any amplification was needed, it was provided by the new article 8 *bis* proposed by Algeria.

21. Mr. MUCHUI (Kenya) said that his delegation had previously expressed support for the present text of article 9. However, it was prepared to consider the

French and Algerian amendments on their merits. Paragraph 1 of the French amendment was the same as the Algerian amendment and both were an improvement on the original text in that they brought out more clearly the concept of the passing of State property which, in the International Law Commission draft, could be inferred only from the title of article 9. However, the title of the new article proposed by Algeria was more appropriate than the title of the French amendment and he therefore favoured adoption of the former. The Soviet representative's criticism at the previous meeting that the Algerian proposal appeared at first sight to refer to all State property had been convincingly refuted by the Swiss representative. He saw no need to include in the article the concept of the corresponding passing of obligations, in view of the general agreement which the Committee had reached on that question after discussion.

22. With regard to paragraph 2 of the French amendment to article 9, he agreed with the view expressed by other speakers that the concept of identical rights was too restrictive and might cause difficulty in exceptional cases. He favoured the inclusion in the draft convention of the new article 8 *bis* proposed by Algeria and the retention of article 9 as at present worded but with the addition of the word "concomitant" after the words ". . . the arising of the".

23. Mr. AL-KHASAWNEH (Jordan) said that article 9, as drafted by the International Law Commission, was compact and logical, although it would be improved by the addition of the word "concomitant". He would have difficulty in accepting the French amendment, and particularly the reference to "identical rights", which would open the door to the possibility of abuse of the acquired rights of third parties. The question of continuity, which had been raised by the Netherlands representative, was fully discussed in paragraphs (3) and (4) of the International Law Commission's commentary on article 9. He agreed with the views expressed on that subject by the Egyptian representative.

24. Mr. MONCEF BENOUNICHE (Algeria) said that his delegation's proposal was not an amendment to article 9; it was a proposal to insert an entirely new article in the draft convention. It should therefore not be discussed in conjunction with the French amendment to article 9. Referring to the text of the proposed new article, he said that his delegation could accept the insertion of the words "of the articles" after the phrase "in accordance with the provisions".

25. Mr. SAINT-MARTIN (Canada) supported the French amendment.

26. Mr. BEN SOLTANE (Tunisia) said that he shared the views of the Algerian and Egyptian representatives concerning the reference in the French amendment to "identical rights". Inclusion of the word "identical" might have the effect of limiting the rights of successor States. His delegation supported the International Law Commission's text of article 9.

27. Mr. PAREDES (Ecuador) supported the insertion of the new article 8 *bis* proposed by Algeria. That article should be followed by the International Law Commission's text of article 9, to which it would be appropriate to add the word "concomitant".

28. Mr. PIRIS (France) said that many delegations had expressed themselves in favour of separating what were in fact two concepts, namely the passing of State property and the effects of that passing. Such separation was achieved both by the French amendment, which was divided into two paragraphs, and by the Algerian proposal to insert in the proposed convention a new article 8 *bis* distinct from article 9 as drafted by the International Law Commission. A number of speakers had expressed a preference for the title used in the Algerian amendment. For the moment, his delegation maintained the title it had proposed, but it could agree to the question of the title being decided by the Drafting Committee.

29. The French delegation could also agree to ending paragraph 1 of its amendment with the words ". . . in accordance with the provisions of the articles in the present Part". Several speakers, including the representatives of Switzerland, Greece and Kenya, had already refuted the Soviet representative's argument that paragraph 1 of the French amendment might be interpreted as implying that all State property would in all cases pass from the predecessor to the successor State.

30. His delegation agreed with the Soviet delegation that not all State property of the predecessor State passed to the successor State, but it considered that the drafting of paragraph 1 of its amendment expressed that idea quite clearly, since the concluding phrase of the paragraph stated that the passing of State property would take place in accordance with the provisions of the subsequent articles, that was to say, within the limits set by those provisions. However, if the Drafting Committee could find a better formulation for that particular point than that in document A/CONF.117/C.1/L.21, his delegation would be prepared to accept it.

31. With regard to paragraph 2 of the French amendment, the introduction of the word "concomitant" before the word "origination", which reflected continuity, had been well received by all speakers. Only the reference to "identical rights" seemed to present difficulties for some delegations. However, since the Committee of the Whole was unanimously of the opinion that rights to State property passed together with such obligations as might be attached to that property, it seemed preferable to say so in the text.

32. Some speakers had feared that the term "identical rights" might be interpreted as limiting the sovereignty of the successor State. Such was not his delegation's interpretation: it considered that the article dealt only with the effects on State property of the succession of States as such, at the actual date of the succession. Subsequently, the successor State was free to exercise its sovereignty as it wished.

33. He drew attention to the fact that the Drafting Committee had been requested to take account of his delegation's amendment to article 8 (A/CONF.117/C.1/L.5). His delegation maintained its amendment to article 9 (A/CONF.117/C.1/L.21) and trusted that the Drafting Committee would be informed of the discussion on that article in order to help it in reviewing the wording of article 8.

34. Mr. CONSTANTIN (Romania) said that, after listening carefully to all the arguments, his delegation was convinced, like the majority of those who had spoken, that the International Law Commission's draft article was the best, since it was clear and unambiguous.

35. The CHAIRMAN said that the Committee now appeared to have concluded its discussion of article 9. The amendment submitted by Greece having been withdrawn, he invited the Committee to vote on the French amendment in document A/CONF.117/C.1/L.21.

The French amendment was rejected by 29 votes to 21, with 10 abstentions.

36. The CHAIRMAN invited the Committee to vote on the amendment submitted by the Federal Republic of Germany (A/CONF.117/C.1/L.3).

37. Mr. OESTERHELT (Federal Republic of Germany) said that the content of his delegation's amendment appeared to be covered by the general understanding reached by the Committee of the Whole. In the light of the discussion which had taken place and the suggestions which had been made, he hoped that the Drafting Committee would be able to produce a form of wording for article 9 which better expressed the understanding reached. His delegation was prepared to withdraw its amendment in the light of that possibility, but reserved the right to reintroduce it later if the text produced by the Drafting Committee did not come up to his delegation's expectations.

38. The CHAIRMAN invited the Committee to vote on draft article 9, as proposed by the International Law Commission.

Draft article 9, as proposed by the International Law Commission, was adopted by 45 votes to none, with 18 abstentions.

39. Mr. MAAS GEESTERANUS (Netherlands) thanked the representative of the Federal Republic of Germany for having drawn attention to the fact that the discussion in the Committee had resulted in a certain understanding regarding particular elements of the International Law Commission's draft article. His delegation could, as a result, accept the article, but had abstained in the vote on it, as it could summon up little enthusiasm for its wording.

40. Mr. MURAKAMI (Japan) said it was his delegation's understanding that no State could pass more than it owned to another State. It also considered that, as the Expert Consultant had confirmed, the words "the extinction of the rights of the predecessor State and the arising of the rights of the successor State" reflected two aspects of one uninterrupted process with no time gap. It was on that basis that his delegation had not opposed the adoption of the International Law Commission's text.

41. Mr. MONNIER (Switzerland) said that his delegation had voted in favour of the French amendment. It had voted in favour of the International Law Commission's text in the light of the clarification provided by the French amendment and the explanations given by the Expert Consultant. Those clarifications were based on simple elements and rules which his delegation considered to be implicit in the text adopted, even though they were not expressed.

42. Mrs. OLIVEROS (Argentina) said that her delegation had been able to approve the International Law Commission's text, but would have preferred to see included in it the qualifications "concomitant" and "identical" which appeared in the French amendment. Those concepts were, however, implicit in the International Law Commission's text, according to the explanation given by the Expert Consultant; her delegation had therefore not opposed the adoption of article 9.

43. Mr. FREELAND (United Kingdom) said that his delegation had voted in favour of the French amendment basically because, in its view, that text brought out more clearly what his delegation understood to be the intent of article 9.

44. His delegation had abstained in the vote on the Law Commission's text because it continued to believe that the phrase "the extinction of the rights of the predecessor State and the arising of the rights of the successor State" might give rise to doubts. It had been somewhat reassured by the comments of some speakers but felt there was still room for improvement. He suggested that if, for example, the word "relinquishment" were to replace "extinction", and "vesting" or "assumption" were to replace "arising", the interpretation of the article would be less open to doubt. He hoped that the Drafting Committee would agree that some such adjustment might be made to the text of the article.

45. Mr. RASUL (Pakistan) said that his delegation had voted in favour of both the French amendment and the Law Commission's text because it was basically satisfied with the Expert Consultant's explanation that nobody could transfer more rights than he possessed. It also understood the use of the words "concomitant" and "identical" to be consistent with that explanation and had therefore voted in favour of the French amendment.

46. Mr. DALTON (United States of America) said that his delegation had voted in favour of the French amendment because it found it clear and reasonable. It had been unable to vote in favour of the International Law Commission's text because its drafting was not clear. While his delegation did not regard article 9 as necessary and believed the proposed convention could function satisfactorily without it, it would be prepared to reconsider its position if changes on the lines suggested by the representative of the United Kingdom at the 7th meeting were accepted by the Drafting Committee and if the Algerian proposal for a new article 8 *bis* were accepted.

47. Mr. PIRIS (France) said that his delegation had been unable to vote in favour of the International Law Commission's text for reasons similar to those given by the representative of the United Kingdom. However, he pointed out that there had been general agreement in the Committee as to the concomitance of the extinction and arising of the rights of the predecessor and successor States and the impossibility of the passing of more rights than the predecessor State possessed. State

property of the predecessor State therefore passed to the successor State with the obligations attached to it. Because of that unanimous interpretation, his delegation had merely abstained on the text of article 9.

48. Mr. de VIDTS (Belgium) said that his delegation had voted in favour of the French amendment because it considered that text clearer and more sound from a legal standpoint. It had, however, been able to accept the International Law Commission's text on the basis of the explanations given by the representative of Switzerland, which his delegation endorsed.

49. The CHAIRMAN invited the Committee to vote on the Algerian amendment, which called for the addition of a new article 8 *bis* between articles 8 and 9.

50. Mr. TÜRK (Austria) said that many delegations felt that the newly adopted article 9 was incomplete and his own delegation saw no need for a separate new article before article 9. He therefore proposed that the text of the proposed new article 8 *bis* should be incorporated in article 9 as paragraph 1.

51. The CHAIRMAN pointed out that that solution was similar to the French amendment which had just been rejected by the Committee. Moreover the proposal involved a question of presentation which might possibly be resolved in a different way.

52. Mr. AL-KHASAWNEH (Jordan) said that, if the Austrian representative's proposal were adopted, the title of article 9 would have to be changed to "Effects of succession on State property", in line with the content of the Algerian amendment.

53. Mr. ECONOMIDES (Greece) agreed with the Chairman's view that the Austrian representative's proposal was related to the presentation of the draft convention and could be simply referred to the Drafting Committee, if the Algerian delegation did not object.

54. Mr. LAMAMRA (Algeria) said that his delegation had already stressed the autonomy of its amendment, but at the same time fully respected the International Law Commission's text, which had been adopted, including its title. He hoped that the Algerian amendment would be treated independently and as a whole and voted upon accordingly.

55. Mr. BEN SOLTANE (Tunisia) supported the Algerian representative's remarks.

56. Mr. TÜRK (Austria) said that he did not wish to press the proposal he had made. The question was one of form which could be dealt with by the Drafting Committee.

57. The CHAIRMAN invited the Committee to vote on the Algerian amendment (A/CONF.117/C.1/L.22).

The Algerian amendment was adopted by 35 votes to none, with 21 abstentions.

58. Mr. SHASH (Egypt) said that his delegation had abstained in the vote because the idea contained in the new article 8 *bis* was implicit in articles 9 and 10 and also because there would be considerable repetition in the consideration of other parts of the proposed convention.

59. The CHAIRMAN noted that the Committee had completed its consideration of the draft articles in Part II, section 1. The articles adopted would be sent to the Drafting Committee.

The meeting rose at 5.45. p.m.

11th meeting

Wednesday, 9 March 1983, at 10.10 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 13 (Transfer of part of the territory of a State)

1. Mr. PIRIS (France) introduced the three amendments proposed by his delegation to article 13 (A/CONF.117/C.1/L.16 and Corr.1).

2. The first amendment was the deletion from paragraph 1 of the words "by that State". His delegation considered that the distinction between cases of transfer of part of the territory of a State to another State (article 13) and those of separation of part or parts of the territory of a State with a view to its uniting with another State (article 16, paragraph 2) was not clear. In its commentary on article 13, the International Law Commission based that distinction on the fact that the first case concerned the transfer of territory without the consent of the populations concerned, whereas that consent was required in the second case. However, historical examples existed of territory ceded by one State to another following a referendum among the inhabitants concerned; furthermore, it might be asked whether a transfer of territory carried out without the consent of the population concerned would not violate the Charter of the United Nations and the principle of self-determination. The proposed deletion would cover all transfer situations, whatever their origin.

3. The second amendment related to paragraph 2(*b*), which dealt with a situation in which there was no agreement between the predecessor and successor States. As at present worded, the subparagraph provided that movable State property of the predecessor State "connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State". The

idea of the connection between the activity of the predecessor State in respect of the territory concerned struck the French delegation as too vague, and it therefore proposed, in the interests of precision and clarity, to refer to movable State property "having a direct and necessary connection with the administration and management of the territory". That wording had, in fact, been used by the International Law Commission in paragraph (11) of its commentary on article 12 and in paragraph (23) of its commentary on article 25—the provision concerning State archives.

4. The third amendment proposed by the French delegation was the addition of a new suparagraph (*c*) to paragraph 2, providing that the predecessor State should retain the property necessary for the functioning of those services which it maintained or established on the territory of the successor State with the agreement of the latter. That amendment was consistent with State practice in such cases, which involved the passing to the successor State of all immovable State property in the "public domain", namely, property which had been specially adapted for the use of the public or for the provision of public services, including ports, airports, roads, railways and other like installations. Immovable property in the "private domain" used by the predecessor State for the performance of administrative functions was likewise transferred to the successor State with the relevant functions. That meant issuing banks, prisons, courts, and buildings housing administrative services. However, State practice did make one exception to such transfer. Where the predecessor State established a new service (embassy or consulate) or continued to provide a public service after the succession of States, with the specific agreement of the successor State, it retained the property necessary for that purpose, consisting of a very small part of the transferred property as a whole. That might happen, for example, in the case of a public service which the successor State was not in a position to assume and which it requested the predecessor State to maintain, or in the case of functions proper to the predecessor State itself, such as the maintenance of a paymaster's office through which to continue to pay retirement pensions and other benefits to residents in the transferred part of the territory. The new subparagraph proposed by the French delegation was designed simply to take such practice into account.

5. Mr. NATHAN (Israel) noted that article 13 rightly drew a distinction between movable and immovable State property, a pattern which was followed by the subsequent articles dealing with the specific effects on property of various different categories of succession. As it stood, however, article 13, paragraph 2(*b*) might appear to imply that movable State property meant tangible, material property as distinct from incorporeal rights such as debt claims or stocks and shares, an erroneous impression which was reinforced by the definition of State property in article 8, which differentiated between property, rights and interests. Since he was sure that it was the Commission's intention, borne out by both the commentary to article 13 and the wording of article 35, the corresponding article on State debts, which spoke of "property, rights and interests which pass to the successor State" and thus clearly proceeded on the assumption that intangible property also passed, to encompass both tangible and intangible property, that intention should be reflected clearly in paragraph 2(*b*). He suggested accordingly that the words "rights and interests" or "including rights and interests" might be added after the words "movable State property" in subparagraph (*b*).

6. Cases might arise in which it would be impractical to arrange for the transfer of intangible movable property *in specie*. In such circumstances the parties should have the option of agreeing that the predecessor State should pay the appraised value of the property in lieu of its physical passing.

7. The criterion in paragraph 2(*b*) for determining which movable State property passed to the successor State, namely, that it should be "connected with the activity of the predecessor State in respect of the territory to which the succession of States relates", was too broad and vague, for a certain type of property might not be connected exclusively with the given territory but might, as in the case of railway rolling stock or cable and wireless equipment, be necessary to the activity of the predecessor State in the whole of its territory and not just in the part subject to succession.

8. While the Commission's draft was too wide, the French amendment to paragraph 2(*b*), on the other hand, was excessively narrow, reintroducing the notion of the public domain and hence the distinction between property owned *jure imperii* and that owned *jure gestionis* which had rightly been discarded by the Commission in favour of the single criterion of State ownership. The solution might be to establish the criterion that the movable State property which passed was that which had its principal connection with the territory in question.

9. The French delegation's proposed amendment to paragraph 1 seemed not only unnecessary but unacceptable because the deletion of "by that State" would disturb the balance of the paragraph, which was weighted towards the primary assumption of agreement and settlement of questions between the two States involved.

10. Mr. NAHLIK (Poland) expressed the hope that, since the French delegation's amendments were clearly three quite independent proposals, the Committee would take a decision on each one separately.

11. He stated that he had difficulties of different kinds with all three amendments. There seemed to be very little justification for the proposed deletion of the words "by that State" in paragraph 1. The suggestion that the retention of those words might leave open the possibility of a transfer taking place in an illegal manner was most unlikely, since it was a fundamental principle of the proposed convention, formulated in its article 3, that it would cover only situations which were in conformity with international law.

12. The proposed amendment to paragraph 2(*b*) seemed to seek to replace a vague wording by another still vaguer. One general concern behind the draft articles, as also behind the 1978 Vienna Convention on Succession of States in Respect of Treaties,[1] was to

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

leave the successor State maximum freedom of action. In that respect, the formulation proposed by the International Law Commission had the advantage of being flexible, whereas the French delegation's proposed redraft, although pretending to be restrictive, was so vague, especially in its use of the words "direct and necessary", as to be open to widely differing interpretations.

13. However, it was the third of the French delegation's amendments which caused his delegation the greatest concern. It would be dangerous to admit such an exception as the new proposed subparagraph, which gave too much freedom to the predecessor State and might be used by it as a means of arrogating to itself disproportionate rights and privileges.

14. Mr. MONCEF BENOUNICHE (Algeria) said that in his view the draft article in the form proposed by the International Law Commission satisfactorily covered all aspects of the question.

15. With regard to the proposed deletion of the words "by that State", by which the French delegation sought to preclude the possibility of a transfer occurring by a decision of the predecessor State without the consent of the population of the territory concerned, he pointed out that the article would be read and interpreted in the context of the future convention as a whole. That convention, as the representative of Poland had correctly observed, was based on the premise, set forth in article 3, that its provisions covered only those successions of States which occurred in conformity with international law and, in particular, with the principles embodied in the Charter of the United Nations. Although a few rare examples of the case envisaged by the French delegation were to be found in recent history, they had all been in violation of international law and hence *ipso facto* outside the scope of the article. Thus, seen in relation to article 3, the words "by that State" were not ambiguous and should be retained, since they reflected the important principle of the sovereignty of States in the process of succession.

16. As far as the proposed redraft of paragraph 2(*b*) was concerned, he suggested that perhaps the Expert Consultant might be asked to explain why the Commission had chosen the wording of its draft article in preference to the other possible formulas which it had considered.

17. He regarded the French proposal for a new subparagraph (*c*) as superfluous; it assumed agreement between the parties, and paragraph 1 of the draft articles as it stood already covered all such situations quite adequately. There were no grounds for disrupting the coherent structure of the article by adding a special provision for a small category of State property.

18. Mr. ROSENSTOCK (United States of America) said that he could not see that the words "by that State" were significant or were related in any particular way to the provisions of article 3. For example, if the United States were to agree to transfer the State of Florida to Mexico, in exchange for 50 years' guaranteed oil supplies, without the consent of the population of the State, that decision would clearly be illegal, and thus excluded by the terms of article 3, irrespective of the presence or absence of those words in article 13. He therefore did not accept that the retention of those words could possibly legitimize anything which was barred under article 3.

19. He regarded the proposed redraft of paragraph 2(*b*) as a much better and clearer version.

20. He noted that in the proposed new subparagraph (*c*) the crucial words were "with the agreement of the latter", namely, of the successor State. Once properly understood in their context, those words should dispose of many of the objections and fears which had been expressed regarding the possibility that they might give excessive rights to the predecessor State.

21. Mr. FAYAD (Syrian Arab Republic) said that the concept underlying article 13 was most clearly expressed by the wording chosen by the International Law Commission. The amendments proposed by France would tend to restrict or hinder the transfer of State property in that they would make it possible for a predecessor State to retain rights which, in accordance with article 9, should pass to a successor State. His delegation therefore favoured retention of the Commission's text.

22. Mr. DELPECH (Argentina) said that other speakers, and particularly the representative of Algeria, had already expressed most of his delegation's objections to the amendments proposed by France. In general he felt that it would be best to retain the wording prepared by the International Law Commission.

23. Mr. PAREDES (Ecuador) said that the deletion of the phrase "by that State" in paragraph 1 had dangerous implications in that it would not exclude the possibility that a foreign Power might bring pressure to bear on a State to transfer part of its territory.

24. His delegation also objected to the other amendments proposed by France since they might give rise to conflicting interpretations.

25. Mr. HAWAS (Egypt) said that his delegation preferred the text of article 13 as drafted by the International Law Commission. In particular, he considered that the amendment proposed by France to paragraph 1 was incompatible with the terms of article 3. Commenting on the proposed redraft of paragraph 2(*b*) he felt that the Commission's wording was preferable, but suggested that the Expert Consultant might perhaps explain the reasoning by which the Commission had arrived at its formulation of the subparagraph. The proposed additional subparagraph (*c*) seemed to the Egyptian delegation to confer on the predecessor State a privilege to which it was not entitled, and was therefore unacceptable.

26. Mr. A. BIN DAAR (United Arab Emirates) said that he too could not accept the amendments proposed by France to article 13. There was every reason to suppose that disputes would arise between predecessor and successor States as to what constituted "a direct and necessary connection" in the amended version of paragraph 2(*b*). The effect of the proposed additional subparagraph (*c*) would be to put pressure on the successor State to accept any agreement in advance, and to give the predecessor State the opportunity of determining for itself what property it would retain in the territory of the successor State.

27. Mr. MUCHUI (Kenya) said that the French delegation's amendment to paragraph 1 would open the door to illegal transfers of territory in contravention of article 3.

28. With respect to paragraph 2(*b*) he felt that the revised wording submitted by France was too restrictive and agreed with previous speakers that it would be desirable to ask the Expert Consultant to explain how the Commission had arrived at its version of the text, which had the merit of leaving greater scope for interpretation.

29. With regard to the proposed additional subparagraph (*c*), he said it had been pointed out by other speakers that the phrase "with the agreement of the latter" was redundant, since under the terms of paragraph 1 the passing of State property was to be settled by agreement between the predecessor and successor States. A new subparagraph in the terms proposed by France would be a potential source of misunderstanding, and in any event belonged properly to paragraph 1 rather than paragraph 2, whose purpose was to establish rules to be followed when there was no agreement between the States concerned.

30. Mr. ZSCHIEDRICH (German Democratic Republic) said that it was to be noted that the definitions of the various types of State succession were largely identical in the 1978 Vienna Convention on Succession of States in Respect of Treaties and in the draft convention under consideration, thus ensuring the greatest possible uniformity in the application and interpretation of the two instruments. On the other hand, a comparison of the respective articles showed that article 13, and the corresponding articles 25 and 35, were an improvement on article 15 of the 1978 Vienna Convention. In paragraphs (1) to (11) of its commentary to article 13 the International Law Commission had convincingly explained the reasons for the changes.

31. His delegation strongly supported the distinction between movable and immovable property formulated in article 13 and the differentiated treatment accorded to the two types of property. The Commission's theoretical approach to movable State property in paragraph 2(*b*) was also fully justified.

32. Referring to the French delegation's amendments to article 13, he said that the proposed redraft of paragraph 2(*b*) had the effect of limiting the scope of the article. The proposed deletion of the words" by that State" in paragraph 1 was not acceptable; it might be less misleading and less open to differing interpretations to say ". . . the predecessor State from which the property in question passes", but on balance his delegation would prefer the Commission's version.

33. The proposed new subparagraph (*c*) introduced a totally new element into article 13 and indeed into the draft articles as a whole. It appeared to put the predecessor State in a position in which it could exercise some rights with respect to property which normally passed to the successor State and his delegation accordingly felt that the proposed subparagraph should not be included.

34. Mr. CHOMON (Cuba) said that article 13 as drafted by the Commission was fully adequate and that his delegation would have difficulty in accepting the French delegation's amendments. In particular, the redrafting of paragraph 2(*b*), weakened the effect of the article by imposing a restriction on successor States which was at variance with the purpose of the text. The proposed new subparagraph (*c*) granted excessive privileges to predecessor States.

35. Mr. JOMARD (Iraq) agreed with the previous speaker that the Commission's version of article 13 was preferable. The provision in the proposed additional paragraph was redundant in that the contingency that it was intended to cover was already dealt with by paragraph 1.

36. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation supported the amendments proposed by France, which remedied deficiencies in article 13 and in other provisions. In particular, his delegation felt that the Commission's wording in paragraph 2(*b*) was unduly vague and the proposed reference in the French amendment to "a direct and necessary connection" would represent a definite improvement in that respect. He thought that the International Law Commission had been right to state that State practice showed that a direct and necessary link was the condition for the passing of property.[2]

37. He emphasized that the proposed new subparagraph (*c*) would allow a predecessor State to retain certain property only if there was an agreement with the successor State with regard to the continued functioning of certain services. The provision corresponded to international practice and its place in paragraph 2 of article 13 was correctly chosen.

38. Mr. BOCAR LY (Senegal) said that the amendment proposed by France to paragraph 1 would disrupt the balance of article 13. He suggested that the Expert Consultant might be asked to comment on its implications.

39. His delegation agreed with the representative of Algeria that the deletion of the phrase "by that State" in paragraph 1 would be ill-advised, for the phrase served to reinforce the important principle of sovereignty of States affirmed in article 3. The words "a direct and necessary connection" in the amended version of paragraph 2(*b*) were also unsatisfactory in that they left open the possibility that a predecessor State might interpret them in such a way as to withhold property that would normally pass in the event of a succession. The expression used in the Commission's draft—"connected with the activity of the predecessor State"—echoed the principle of equity, which the French delegation's amendment did not take into account.

40. In the additional subparagraph (*c*) proposed by France the reference to "services which it [the predecessor State] . . . establishes" was surely misplaced, since the establishment of services would be governed by the rules concerning normal relations between sovereign States, not by those applicable to a succession of States.

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[2] *Yearbook of the International Law Commission, 1976*, vol. II (Part I) (United Nations publication, Sales No. E.77.V.5 (Part I)), document A/CN.4/292, chap. III, article 12, para. (29) of the commentary.

41. In general, therefore, his delegation would prefer the original drafting of the article.

42. Mr. ECONOMIDES (Greece) said that in his opinion it was relatively immaterial whether the phrase "by that State" in paragraph 1 was retained or deleted, for the interpretation of the article would not be affected either way. More significant was the omission from paragraph 1 of any reference to internal law: any transfer of territory must be in conformity with both international and internal law, and he wondered if the Expert Consultant could confirm whether that aspect was in fact covered implicitly in the text.

43. His delegation felt that, if the proposed new subparagraph (*c*) were to be added, it should come after paragraph 2(*a*), with whose subject matter it was directly linked. Secondly, his delegation would prefer the words "may, however, retain" to be substituted for "shall, however, retain". With those provisos his delegation found the proposed new subparagraph acceptable.

44. Mr. MIKULKA (Czechoslovakia) said that he favoured the International Law Commission's draft. He suggested, however, that a slight drafting change might be introduced in paragraph 1 in order to make it quite clear that the predecessor State and the successor State were under no obligation to negotiate an agreement with regard to the passing of State property. The Drafting Committee might perhaps be invited to bear that point in mind. He was opposed to all three of the amendments proposed by France.

45. Mr. LEITE (Portugal) supported the French delegation's amendments.

46. Mr. MONNIER (Switzerland) said that he was in favour of the French delegation's amendment to paragraph 1 of article 13 to the extent that it was connected with the provision contained in article 16, paragraph 2. The two hypotheses envisaged in articles 13 and 16, paragraph 2, respectively, would in his view be extremely difficult to distinguish in practice; in fact, it was his delegation's intention in due course to propose the deletion of article 16, paragraph 2 so that the draft convention might deal with only one situation of transfer of part of the territory of a State to another State. He saw no substance in the view expressed by some previous speakers that the French amendment to paragraph 1 of article 13 conflicted with the provision contained in article 3. He also accepted the French delegation's amendment to paragraph 2(*b*) and the proposed new subparagraph (*c*), especially in the light of the remarks made by the representative of the United States of America. Unlike some speakers, he failed to see any discrepancy between the reference to an agreement in the proposed new subparagraph and the phrase "in the absence of such an agreement" at the beginning of paragraph 2; that phrase referred to agreement on the passing of State property, whereas the agreement mentioned in the text proposed by France related to the maintenance or establishment of services in the territory of the successor State.

47. Mr. EDWARDS (United Kingdom) said that he supported all three of the French delegation's amendments. The first, relating to paragraph 1 of article 13, left open a number of possibilities which the International Law Commission's draft excluded. The effect of the second, concerning paragraph 2(*b*), would be to remove the phrase "connected with the activity of the predecessor State", with which his delegation had never been satisfied; and the third, proposing the addition of a new subparagraph, did no more than reflect existing practice. He drew particular attention to the fact mentioned by the representative of the Federal Republic of Germany that the services mentioned in the proposed new subparagraph would be established with the agreement of the successor State.

48. Mr. CONSTANTIN (Romania) said that he was in favour of the International Law Commission's draft and opposed the French delegation's amendments. At the same time, like the representative of Czechoslovakia, he felt that the Drafting Committee might usefully consider the wording of paragraph 1. In his view, it was important to stress that, in the event of a transfer of part of the territory of a State to another State, the States concerned should reach agreement on the passing of State property.

49. Mr. HALTTUNEN (Finland) opposed the French delegation's amendment to paragraph 1, as the proposed deletion of the phrase "by that State" might leave some doubt as to whether the definition of State property contained in article 8 was applicable to the articles in Part II, section 2, of the draft convention. The Drafting Committee might be requested to look into possible ways of avoiding such confusion, bearing in mind that there were three possible kinds of State property, namely, the property of the predecessor State, that of the successor State and that of a third State. He had no objection to the other amendments proposed by France.

50. Mr. RASUL (Pakistan) requested the Expert Consultant to throw some light on the phrase "is to be settled by agreement" in paragraph 1 of article 13. That phrase might be construed as the enunciation of a principle, in which case it was surely out of place in article 13. In the light of the Expert Consultant's explanations, the Committee might consider asking the Drafting Committee to make the language of the paragraph clearer.

51. Mr. do NASCIMENTO e SILVA (Brazil) remarked that, since the question of the transfer of part of a State's territory would normally be settled by agreement between the two States concerned, the rules contained in paragraph 2 of article 13 were merely residual in nature. Referring to the French delegation's amendment to paragraph 1, he said that although the deletion of the phrase "by that State" would not, in his view, involve any discrepancy with article 3, he would prefer the original text to be maintained. The wording proposed by France for paragraph 2(*b*) was undeniably more precise but it was also too restrictive. The International Law Commission had examined a text like that proposed by France and had discarded it. Lastly, the proposed new subparagraph (*c*) would be out of place in paragraph 2, which applied to cases where there was no agreement. The new text proposed by France envisaged the existence of an agreement and, for that reason, was subsumed under paragraph 1.

52. Mr. MAAS GEESTERANUS (Netherlands) agreed with the representative of Finland that some

drafting work was required on the phrase "State property of the predecessor State", which was not in harmony with the wording of article 8. Referring to the French delegation's amendment to paragraph 2(*b*), he said that the proposed text, if still somewhat vague as the representative of Senegal had remarked, was nevertheless less vague than the wording adopted by the International Law Commission; it was useful to specify that the connection of the movable State property in question should be with the administration and management of the territory to which the succession of States related and that the connection should be direct and necessary. The text of paragraph 2(*b*) proposed by France made for a better understanding of the International Law Commission's ideas without sacrificing any of them.

53. Mr. BEDJAOUI (Expert Consultant) said that the deletion of the words "by that State" from paragraph 1 of article 13 opened up a large number of possibilities which the International Law Commission had deliberately wanted to exclude in the specific context of article 13. That article envisaged the case of the transfer of part of the territory of a State not accompanied by the establishment of a new State, whereas article 16 dealt with cases where parts of the territory of a State separated from that State and formed a new State.

54. In connection with the succession of States in respect of treaties as well as in respect of matters other than treaties, the Commission had decided to proceed on the basis of three broad categories of cases: (*a*) succession in respect of part of a territory; (*b*) newly independent States; and (*c*) the uniting and separation of States. It was quite evident that a territory which was large enough and contained a sufficiently large population to form a separate new State had to be treated in a different way, *inter alia* as regards State property, than a much smaller territory whose transfer did not involve the establishment of a new State. In that connection, he referred to the case of the extension, as the result of an agreement, of the Geneva-Cointrin airport into former French territory, mentioned in paragraph (2) of the Commission's commentary on article 13. Indeed, the criterion of dimension had been in the forefront of the Commission's thinking with regard to the distinction between articles 13 and 16, paragraph 2. For the same reason, article 13 placed the accent on agreement between the two States involved, whereas in article 16 the possibility of agreement was given a less pre-eminent place. He did not think that the deletion of the words "by that State" would bring article 13 into conflict with article 3, which was a general safeguard clause covering all categories of cases envisaged in the draft convention. Whether or not those words were retained, the situation envisaged in article 13 had to remain in conformity with international law and, in particular, with the Charter of the United Nations.

55. It was true that article 13, paragraph 2 was rather vague, but precision, though desirable, had to be based on the right criteria. Could the Conference decide exactly what property would be involved and which authority would determine the need for the transfer? There was a great danger in trying to draft excessively specific language and a text that took account of all situations would be difficult to draft.

56. Although the idea behind the new subparagraph (*c*) proposed by France was a good one, he feared that problems would arise because the new subparagraph, while intended to form part of paragraph 2 which postulated the lack of an agreement between the predecessor and successor States, referred to an agreement. He found it hard to envisage the possibility that the agreement was not the same one: either there would be a single agreement covering all the relevant matters, or there would be none. Moreover, since the proposed new subparagraph referred to an agreement between the parties, that was yet another reason to keep the words "by that State" in paragraph 1 of article 13.

57. He also had doubts about the wording "the predecessor State shall, however, retain the property necessary for the functioning of those services . . .", because, taken literally in conjunction with subparagraph (*b*), it might leave open the possibility of joint administration by the successor State with the predecessor State itself.

58. Lastly, he considered that the proposed new subparagraph (*c*) was too wide in scope, because it seemed to provide that the predecessor State would retain the property necessary for the functioning of the services which it maintained or established in the entire territory of the successor State, rather than merely in the part that was transferred to the latter.

59. Mr. ROSENSTOCK (United States of America) thanked the Expert Consultant for confirming that the words "by that State" did not affect the principle of article 13, and that the change in terminology from "transfer" to "separation" was in large measure a drafting amendment. He assumed that the Drafting Committee would decide which was the better word.

60. He also appreciated the Expert Consultant's point that article 13 covered a category of succession of States that was not dealt with in the 1978 Vienna Convention on Succession of States in Respect of Treaties. Although it was unnecessary to follow that Convention slavishly, the Conference should not depart from it lightly without very compelling reasons, and certainly not because of mere niceties. His delegation considered that the new category added little and was likely to create confusion and undesirable differences of treatment, although it had been interested to hear the thinking behind the proposal.

61. Mr. MONNIER (Switzerland) thanked the Expert Consultant for his explanation. Nevertheless, he was obliged to point out that, in addition to the two principal hypotheses envisaged in articles 13 and 16, paragraph 2 of article 16 introduced a third hypothesis, namely, that of part of a territory which separated from one State to unite with another. It was only fair that article 16 should grant more favourable provisions to new States, which had special needs. But such a rule was not appropriate when a territory united with an already existing State. There was no need to make a legal distinction between situations where the only difference was one of the size of the area transferred.

62. Mr. ECONOMIDES (Greece), repeating his earlier question in more precise terms, inquired whether it was implicit in the formulation of article 13

that the transfer of part of the territory of a State should be in conformity with its internal law.

63. Mr. BEDJAOUI (Expert Consultant), replying to the Swiss representative, explained that he had merely listed the various situations mentioned by the International Law Commission in its commentary to article 13.

64. In reply to the Greek representative, he said that it was probably implicit in article 13 that the transfer of part of a State's territory had to be consistent with the internal law, for in general a State did not transfer territory unless so authorized by its Constitution or Parliament. Article 16, paragraph 2, on the other hand, envisaged the case of part of a State's territory seceding from that State.

65. Mr. SHASH (Egypt) asked whether the Expert Consultant could explain why the commentary on article 13 referred, in its paragraph (3), to the possible need to consult the population of territory affected by a transfer, whereas the commentary on article 16 contained no such reference.

The meeting rose at 1.05 p.m.

12th meeting

Wednesday, 9 March 1983, at 3.15 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 13 (Transfer of part of the territory of a State) (*concluded*)

1. Mr. BEDJAOUI (Expert Consultant), replying to the question asked by the representative of Greece at the preceding meeting, said that article 3 stated and defined the general conditions for the regular and legal succession of States and article 13 was not intended to be in any way prejudicial to article 3.

2. Mr. ECONOMIDES (Greece) thanked the Expert Consultant for his reply.

3. In his view, the scope of the draft convention covered only the effects of a succession of States in respect of State property, archives and debts and not the succession of States as such, as a legal institution. The question of determining when a succession of States was legal according to international law was not dealt with in the draft convention. That depended on other rules of international law and, in particular, on the Charter of the United Nations. The International Law Commission should therefore have expressly referred in article 13 to the lawful nature of the transfer in relation to the internal law of the predecessor State. In other articles, particularly article 16, the question of the internal law of the predecessor State was not relevant because in the cases covered by those articles a succession of States often occurred against the will of the predecessor State. What was relevant in those circumstances was the legal character of the succession in accordance with article 3. In the case of article 13, that legal character contained two elements, one relating to internal law and the other to international law, whereas, in the case of the other articles, what mattered was the legal character from the point of view of international law.

4. Mr. BROWN (Australia) said that, while he appreciated the efforts of the French delegation to achieve clarity and precision in the text, that should not be done at the expense of common understanding. His delegation was therefore unable to support the French amendments but could approve the International Law Commission's text, on which there appeared to be a greater measure of agreement.

5. Mr. PIRIS (France), replying to points raised in connection with his delegation's amendments to article 13, said that the French delegation was not altogether convinced by the explanation given by the Expert Consultant with reference to the proposal to delete the words "by that State" in paragraph 1. He wondered what criteria would make it possible to distinguish between the cases covered by article 13, paragraph 1, and those covered by article 16, paragraph 2, since the International Law Commission did not provide any and the principle of consulting the inhabitants, which was absolute, applied in both cases, whatever the circumstances. In that connection, he referred to an example quoted by the representative of Egypt of a minor frontier adjustment between France and Italy involving a small territory and a mere seven persons, whom France had felt it necessary to consult before making the adjustment.

6. Consequently, his delegation fully agreed with the suggestion made by the representative of Switzerland at the previous meeting that the deletion of the words "by that State" in paragraph 1 of article 13 should logically be followed by the deletion of paragraph 2 of article 16. Naturally, the question was not one of confusing the transfer and the separation of a State—those processes were of two different legal categories—but, on the contrary, of clarifying both possibilities. Article 13 should cover the transfer of part of the territory of a State, when the transfer did not lead to the establishment of a new State, while article 16 should cover all cases where the separation of part or parts of a territory would lead to the establishment of a new State.

7. The deletion of the words "by that State" and of paragraph 2 of article 16 would simply mean that, when

no new State was established, cases of transfer could be assimilated to those of separation of the territory of a State and its uniting with another State. In both cases, the result was the enlargement of the territory of an existing State by the addition of part of the territory of another State, and in both cases the consent of the populations concerned must have been expressed. A number of speakers had suggested that the question was a matter of drafting. The French delegation was prepared to accept that view and would not request that its first amendment be put to the vote, if the Committee of the Whole was willing to leave the matter to the Drafting Committee.

8. With regard to his delegation's proposed redrafting of paragraph 2(*b*) of article 13, he had noted the Expert Consultant's acknowledgement that the language used by the International Law Commission was vague. But he had not noted any specific criticism of the wording of the French amendment, which was aimed at achieving clarity and had, moreover, been based on the wording used by the International Law Commission in its commentary. Furthermore, courts at both the national and the international level might one day have to apply the convention currently being drawn up and they would have difficulty in applying provisions that were unduly precise.

9. Since his delegation regarded the text of subparagraph (*b*), which it had proposed, as more precise and therefore more satisfactory than the International Law Commission's text, it requested that a vote be taken on that amendment. However, it would not object to other possible changes being made in the text of that amendment. Furthermore, he agreed with the representative of Senegal regarding the relevance of the principle of equity. If the Drafting Committee could include in the French amendment a reference to the principle of equity, his delegation would have no objection.

10. Regarding the third French amendment, namely, the addition of a new subparagraph (*c*), his delegation had been most surprised at the reference which had been made to possible privileges or abuses. The services which the predecessor State might establish or maintain on the territory of the successor State, and for which it would continue to retain certain property, would necessitate the latter State's agreement. If, for example, a university situated on the territory of the predecessor State had a small research centre or an annex on the part of that territory transferred, or if the main works of a drinking-water system were in the predecessor State while the water pipes and purification plant were on the territory transferred, there could be no intention that such services should be cut off at the new frontier. However, his delegation did not insist on the wording of its amendment and was open to further suggestions. Certain proposals to improve the text had in fact already been made, and his delegation was ready to adopt right away the Expert Consultant's proposal, made at the previous meeting, that the words "on the territory of the successor State" should be replaced by the phrase "on the part of the territory transferred to the successor State".

11. In connection with the parallel drawn by several delegations between the agreements referred to in paragraph 1 and those in the new subparagraph (*c*), he pointed out that paragraph 1 referred to a formal agreement negotiated and concluded between the States concerned to deal with the whole problem of the passing of State property, whereas the aim of the new subparagraph (*c*) was a partial agreement whereby the successor State would agree that the services concerned should continue to function or should be established. His delegation could agree to the insertion of the words "recognized as being" before the word "necessary" if that would enable certain delegations to vote in favour of its amendment. The possibility of replacing the word "shall" by "may" at the beginning of the new subparagraph might also be considered. Other improvements of form might also be made, such as relocating the paragraph, but the matter was a drafting one and his delegation was fully confident that the Drafting Committee could achieve the desired result.

12. Lastly, doubts had been raised as to the meaning of paragraph 1 of article 13. The French delegation considered that paragraph 1 described the most desirable and normal solution; in any event, what was both normal and desirable was the negotiation of an agreement between the predecessor and successor States, in all cases.

13. Mr. ZSCHIEDRICH (German Democratic Republic), noting that, under rule 47, paragraph 2, of the rules of procedure, the Drafting Committee had to coordinate and review the drafting of all texts adopted, proposed that the Committee of the Whole should vote on the French amendment to paragraph 1.

14. The CHAIRMAN considered the implications of the French amendment to paragraph 1 too far-reaching for that proposal simply to be referred to the Drafting Committee, as the representative of France had suggested. He believed the Committee of the Whole should vote on all three of the amendments submitted.

15. Mr. PIRIS (France) pointed out that, under the rules of procedure, the Drafting Committee was also authorized to give advice on drafting as requested by the Conference or by the Committee of the Whole. He was agreeable to all three of the amendments being put to the vote, but it should be understood that the Committee of the Whole was not dispensing the Drafting Committee of a task assigned to it under the rules of procedure.

16. Mr. ROSENSTOCK (United States of America) said that his delegation had no objection to the Committee voting on the French amendments; it trusted, however, that there was general agreement that the fact that the word "transfer" was used in the title of article 13 whereas the word "separation" was used in the title of article 16, was to be treated as a matter of drafting.

17. Mr. NAHLIK (Poland) said that the first French amendment had been generally recognized as affecting the substance of the draft article, whereas the brief of the Drafting Committee extended only to drafting matters. A decision should therefore first be taken by the Committee of the Whole on the substance of that amendment.

18. Mr. FREELAND (United Kingdom) said that his delegation was unable to accept any suggestion that the role of the Drafting Committee was confined to

examining texts which had been adopted by the Committee of the Whole. Such an interpretation would make the opening phrase of rule 47, paragraph 2, of the rules of procedure totally meaningless; at the same time it would deprive the Committee of the Whole of an element of flexibility which could be very useful in its search for common ground.

19. The CHAIRMAN invited the Committee to vote separately on the three amendments to article 13 submitted by France in document A/CONF.117/C.1/L.16.

The amendment to paragraph 1 was rejected by 35 votes to 19, with 6 abstentions.

*The amendment to paragraph 2(*b*) was rejected by 31 votes to 20, with 7 abstentions.*

*The amendment to paragraph 2, proposing to add a subparagraph (*c*), as orally revised, was rejected by 39 votes to 10, with 10 abstentions.*

20. The CHAIRMAN invited the Committee to vote on article 13 as proposed by the International Law Commission.

Article 13 was adopted by 40 votes to none, with 18 abstentions, and referred to the Drafting Committee.

21. Mr. SHASH (Egypt), speaking in explanation of vote, said that his delegation had abstained in the vote on the first French amendment because its concern regarding the use of the term "transfer" in article 13 had not been fully dispelled by the Expert Consultant's explanation, which had referred to article 3. His delegation had abstained in the vote on the second French amendment and it had voted against the third French amendment. It had voted in favour of article 13, as proposed by the International Law Commission, on the understanding that efforts would be made to clarify the meaning of the word "transfer".

22. Mr. MURAKAMI (Japan) said that his delegation had voted in favour of the French amendment regarding paragraph 1, because it simplified the text without changing the substance of the provision. It did not share the concern expressed by some delegations about the possible illegality of the transfer under paragraph 1 which might arise by deleting the words "by that State". His delegation considered such fear to be groundless; article 3 dealt with such a problem with sufficient clarity. His delegation shared the concern of the French delegation regarding the difficulty of making a clear distinction between the cases of transfer of part of the territory envisaged in article 13 and the cases of separation of part of the territory covered by article 16, paragraph 2 and was of the view that that question should be resolved when the Committee took up article 2 or when it took up both article 13 and article 16, as well as the corresponding articles in the other parts of the convention.

23. The Japanese delegation had also voted in favour of the French amendment regarding paragraph 2(*b*); it supported the wording of that amendment because it was clearer and more precise than that used by the International Law Commission in its text.

24. Mr. AL-KHASAWNEH (Jordan) said that his delegation had voted against the first French amendment because it had been convinced by the arguments presented by the Expert Consultant. It had voted in favour of the second French amendment, however, because it considered the wording which it proposed more appropriate to the type of succession envisaged in article 13. It had voted against the new paragraph 2, subparagraph (*c*) proposed by France because it would make paragraph 2 self-contradictory, since the opening phrase of the paragraph limited the subsequent subparagraphs to cases where there was an absence of agreement between the States concerned.

25. Mr. SAINT-MARTIN (Canada) said that his delegation had abstained in the vote on article 13 as proposed by the International Law Commission because it was dissatisfied with the formulation in paragraph 2, subparagraph (*b*), ". . . connected with the activity of the predecessor State in respect of the territory . . .". He regretted that the Committee had not accepted the text proposed by France for that subparagraph.

26. Mr. ECONOMIDES (Greece) said that he had voted in favour of the French amendment to subparagraph (*b*) of paragraph 2 and the proposal to add a new subparagraph (*c*) as lending precision to the text. However, he had also voted in favour of article 13 as proposed by the International Law Commission. Its provisions, particularly those in paragraph 1, were sufficiently positive to deserve support.

27. Mr. LAMAMRA (Algeria) said that he had voted against the French amendments. He wished to recall that the transfer of part of the territory of a State, to which article 13 referred, must take place in conformity with the provisions of international law as incorporated in the Charter of the United Nations. Such a transfer could in no way be interpreted as including the transfer by a colonial Power to another State of its powers of administration of a non-self-governing territory. In fact, the transfer must in no way infringe the inalienable right to self-government and independence of peoples under colonial domination in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples.[1] In fact, the use of the expression "part of the territory of a State" excluded such an interpretation, since in contemporary international law a non-self-governing territory did not have the same status as did the territory of the Administering Power.

28. Mr. FREELAND (United Kingdom) said that his delegation had voted in favour of the French amendments for the reasons which he had already given. It had abstained in the vote on article 13 as proposed by the International Law Commission because the discussion had disclosed a number of defects in that text, largely of a drafting nature, some of which might, he hoped, be rectified by the Drafting Committee. In particular, he found the phrase "connected with the activity of the predecessor State in respect of the territory" undesirably vague and he would revert to the matter again in connection with article 14.

29. The CHAIRMAN announced that the Committee had completed its consideration of article 13.

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[1] General Assembly resolution 1514 (XV).

Preparation of a draft preamble and draft final clauses

30. The CHAIRMAN drew attention to the question of preparing a draft preamble and draft final clauses for the future convention. In accordance with the practice of previous codification conferences, as suggested in paragraph 19 of the document on methods of work (A/CONF.117/9), that task might be entrusted to the Drafting Committee. All delegations were free to submit proposals on the subject to the Committee of the Whole. However, if the Conference followed previous practice, such proposals would automatically be referred to the Drafting Committee. Subsequently, the draft preamble and draft final clauses prepared by the Drafting Committee would be submitted direct to the Conference at a plenary meeting. He asked whether the Committee agreed to adopt that traditional procedure for preparing the draft preamble and draft final clauses.

31. Mr. SHASH (Egypt) said that before taking a decision, the Committee must decide whether or not the final clauses would make provision for reservations regarding certain articles of the future convention.

32. Mr. MAAS GEESTERANUS (Netherlands) supported that view.

33. Mr. MONNIER (Switzerland) said that the Chairman's suggestion was acceptable as it was in conformity with previous practice. The final clauses were normally of a technical nature and did not cover the question of reservations. That question could be discussed by the Conference in plenary meeting at an appropriate stage.

34. Mr. LAMAMRA (Algeria) observed that the question of reservations should be the subject of consultations among the regional groups. However, that did not preclude the preparation of draft final clauses by the Drafting Committee in accordance with past practice.

The Committee of the Whole agreed to entrust to the Drafting Committee the task of preparing a draft preamble and draft final clauses.

The meeting rose at 4.40 p.m.

13th meeting

Thursday, 10 March 1983, at 10.10 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

In the absence of the Chairman, Mr. Moncef Benouniche (Algeria), Vice-Chairman, took the Chair.

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 14 (Newly independent State)

1. The CHAIRMAN invited the Committee to consider article 14 and the amendments thereto proposed by the Netherlands (A/CONF.117/C.1/L.18) and the United Kingdom (A/CONF.117/C.1/L.19).

2. Mr. ROSENSTOCK (United States of America) said that in his delegation's opinion article 14 was both unnecessary and unwise. The article created distinctions which were not well founded in logic, law or inherent justice. In urging the deletion of the notion of a special régime for newly independent States from the draft convention under consideration and, consequently, the deletion of article 14, his delegation was guided neither by self-interest nor by ideological motives. Although the United States had at one time been a newly independent State and had acquired substantial territory by purchase, it had not recently been meaningfully involved in any relevant situations either as a predecessor or as a successor State and did not expect to be involved in any substantial successions in the foreseeable future. Neither was it opposed in principle to elaborating a special régime for newly independent States where it was possible or opportune to do so. For example, in the matter of succession of States in respect of treaties the United States had supported such a special régime and the application of the so-called *tabula rasa* principle, which in that context accurately reflected existing law and corresponded to a just view of the volitional and sovereign act of undertaking a treaty obligation. Nothing in the material before the Committee, however, indicated that article 14 was an accurate statement of existing law or that its provisions should be accepted as progressive development of international law. Moreover, in the light, *inter alia*, of article 4 of the draft, it appeared unlikely that the particular situations covered by article 14 would ever be of substantial importance in the future. In that respect, he completely agreed with the views expressed by the representative of Pakistan at the Committee's 3rd meeting; it was not only the United States but the developed States in general, as well as others with century-old traditions, that were least likely to be party to such situations in the future. Accordingly, the United States delegation believed that article 14 was not required by law, logic or justice, did not deal with subjects likely to be of great future importance and would hardly prove to be a stabilizing factor.

3. It might be thought that, since his delegation did not consider the area covered by the article to be a vital one, it should acquiesce in the wishes of others. The difficulty was that article 14 focused on some highly controversial issues which were not essential to the draft convention and which were, in any event, being dealt with elsewhere. In particular, differences arising over matters raised in paragraph 4 of the article would

hardly be resolved in the current Conference, and any language that might emerge was hardly likely to contribute to the creation of a world-wide legal framework acceptable to the developed and developing countries alike.

4. All in all, article 14 was a substantial obstacle to the prospects for a widely acceptable convention and an impediment to the success desired by all, and he therefore urged its deletion.

5. Mr. MAAS GEESTERANUS (Netherlands) said that, while agreeing with the International Law Commission's conclusions as stated in paragraph (32) of its commentary on article 14, he was confused by the way in which the principle of permanent sovereignty over natural resources was dealt with in paragraph 4 of the article under consideration and found it difficult to imagine the possible legal effects of that paragraph. In the first place, the text referred to the sovereignty of peoples, which was not a legal concept. States, not populations, were sovereign under international law. Secondly, the text referred to "sovereignty over wealth". In that connection, he remarked in passing that in the French and Spanish texts the adjective *naturelles* (*naturales*) appeared to qualify both wealth and resources, whereas in the English version of both the draft article and the Commission's commentary the adjective "natural" referred only to resources and not to wealth, with the implication that sovereignty extended over all types of wealth. Be that as it might, the concept of sovereignty over any form of wealth was difficult to understand, unlike that of sovereignty over natural resources which was recognized as a guiding principle in international relations. Even that principle, however, was difficult to define in formal legal terms or to translate into actual legal norms. For example, in certain United Nations studies and at certain United Nations conferences, it appeared to be still a moot point whether petroleum should be regarded as a natural resource in the same way as water and air.

6. Unlike certain other delegations, such as that of the United States of America, his delegation held the view that, notwithstanding the hesitations and uncertainties connected with the use of the term "permanent sovereignty", the deletion of any reference to that principle would fail to reflect the reality of modern international relations. A possible way of dealing with the problem would be to supplement the draft convention with a provision concerning the interpretation of the articles in case of dispute. Another solution, which was that proposed in the Netherlands amendment, might be to draft legal norms which could be applied by courts in case of need.

7. Mr. FREELAND (United Kingdom) said that he shared the United States representative's view of article 14 as an unnecessary and perhaps somewhat distracting provision in a convention like that which the Conference was attempting to draft. Being well placed to understand the importance of the process which formed the subject of the article, the United Kingdom delegation believed that the problems dealt with were not likely to be of central importance in modern times and felt that the best course would be to delete the article altogether. Should the Committee not be prepared to adopt that course, he suggested, while acknowledging the Netherlands delegation's efforts, that paragraph 4 at least should be deleted.

8. Introducing his delegation's amendment (A/CONF.117/C.1/L.19), he referred to his remarks at the 1st meeting of the Committee in connection with article 8 concerning the United Kingdom's practice in the granting of independence to former dependent territories. The system had worked well in the past and he felt that it should be reflected in paragraph 1 of article 14 which, as it stood, appeared to be based on an entirely different concept. He could not agree with the assertion in paragraph (13) of the International Law Commission's commentary on article 14 that the provisions of that article were not intended to apply to property belonging to Non-Self-Governing Territories as that property was not affected by the succession of States.

9. Nor did he accept the statement in paragraph (9) of the commentary that "the Constitution of the Federation of Malaya (1957) provided that all property and assets in the Federation or one of the colonies which were vested in Her Majesty should on the date of proclamation of independence vest in the Federation or one of its States". On the contrary, that Constitution expressly referred to all property and assets which were vested in Her Majesty for the purposes of the Federation or of the colony or Settlement of Malacca or the colony or Settlement of Penang, or, in other words, to property vested in the government of the territory concerned. A similar misunderstanding appeared to have arisen in the mind of the commentary's drafters when preparing footnote 154 (paragraph (9)) referring to the Constitution of the Independent State of Western Samoa (1962), where an important phrase, specifying that the property to be vested in Western Samoa on Independence Day was vested in Her Majesty "in right of the Trust Territory of Western Samoa", was indicated only by omission marks.

10. Quite apart from that important flaw, paragraph 1 of article 14 was full of obscurities and difficulties only too prone to give rise to future disputes. The phrase "having belonged to the territory" occurring in subparagraphs (*b*) and (*e*) was clearly not used in terms of strict legal ownership but in some vaguer sense. The phrase "in proportion to the contribution of the dependent territory" in subparagraphs (*c*) and (*f*) seemed to require mathematical calculations that were practically impossible to carry out. Subparagraph (*d*) included the notion of connection with the activity of the predecessor State, which, as the debate on article 13 had shown, gave rise to considerable disagreement. In brief, far from decisively regulating the matter under consideration, the provisions of article 14, paragraph 1, bore the seeds of extensive controversy.

11. The object of the United Kingdom amendment was, in the first place, to encourage agreement between the predecessor and successor States and subsequently to provide residual rules in the event that no agreement was reached. Subparagraph (*b*) of the amendment made it clear that the basic rule should be that followed in the past by the United Kingdom. In that connection, he said that if the words "government of the territory" were unacceptable, he would be prepared to replace them by some other suitable phrase. Lastly, the proposed subparagraph (*c*) provided the ultimate residual

rule which should come into operation if neither (*a*) nor (*b*) applied. In that case, too, his delegation was prepared to adopt a flexible attitude with regard to the use of the words "direct and necessary link", which the Committee had rejected by voting against the French amendment to article 13 (A/CONF.117/C.1/L.16 and Corr.1).

12. Mrs. THAKORE (India) said that her delegation did not share the views expressed by the previous speakers. In its commentary on article 14, the International Law Commission gave persuasive arguments in favour of including the article, to which India attached considerable importance. Both the United Kingdom and the Netherlands amendments conflicted with the letter and the spirit of the Commission's draft of article 14, which constituted a major example of the progressive development of international law and was possibly the Commission's most important contribution to the draft convention as a whole.

13. One of the main reasons for the International Law Commission's decision to give separate and special treatment to newly independent States, thereby taking full account of the special circumstances surrounding the emergence of such States, had been outlined in a statement made by the Special Rapporteur before the International Law Commission on 28 May 1981[1] when he had said that succession involving newly independent States should not in principle be settled by agreements between the predecessor State and successor State for fear of one-sided agreements favourable to the former administering Power. Another reason stemmed from the introduction of the concept of the dependent territory's contribution to the creation of certain immovable and movable State property of the predecessor State and of the principle that such property should pass to the successor State in proportion to that contribution.

14. Paragraph 1 of the International Law Commission's draft article 14 provided eminently equitable solutions designed to preserve *inter alia* the patrimony and the historical and cultural heritage of the people inhabiting the dependent territory concerned. Her delegation therefore favoured the Commission's draft and would oppose the United Kingdom amendment, which was too restrictive and failed to retain the essential features of the Commission's text.

15. Referring to the Netherlands amendment to paragraph 4 of article 14, she said that it considerably watered down the rule couched in positive and absolute terms in the Commission's draft and merely paid lip service to the principle of permanent sovereignty of every people over its wealth and natural resources, a principle which was in the nature of a rule of *jus cogens*. Far from limiting the scope of paragraph 4, her delegation wished to see the principle of permanent sovereignty of every people over its wealth and natural resources further strengthened by the addition of the words "and economic activities" at the end of the paragraph, thereby echoing the Charter of Economic Rights and Duties of States[2] and taking account of the view repeatedly expressed in the Sixth Committee of the General Assembly that political independence was of no value without economic independence. In that connection she noted with interest the view expressed by some members of the Commission in paragraph (30) of the commentary on article 14, that any agreements which violated the principle of the permanent sovereignty of every people over its wealth and natural resources should be void *ab initio*.

16. In conclusion, she expressed surprise at the Netherlands representative's statement questioning the legal validity of the principle of sovereignty of every people over its wealth and natural resources and, in that connection, referred to the General Assembly's most recent decision upholding that principle, namely, resolution 37/103 of 16 December 1982.

Mr. Šahović (Yugoslavia) took the Chair.

17. Mrs. OLIVEROS (Argentina) said that the issues relating to the independence of peoples and the natural right of all human beings to dwell in freedom in their own land had always been of profound concern to the whole of Latin America, where, after decolonization, successful in spite of the tragedy of internecine wars, the rights of the peoples had ultimately triumphed. The International Law Commission had given tangible expression in the draft articles to the aspirations which lay at the heart of the process of decolonization. Its draft of article 14 had the support of her delegation.

18. She could not endorse either of the amendments proposed respectively by the Netherlands and the United Kingdom, for they would disturb the delicate balance of the draft article as a whole in a way which would distort the very essence of the future convention and destroy its *raison d'être*. The intentions of the Commission in structuring the article in such a carefully balanced way were evident from paragraph (13) of the commentary, which recognized the different nature of property belonging to a dependent territory and explained the different formulation of subparagraphs (*b*) and (*e*) of paragraph 1, which hinged on the special meaning given to the word "property" and its differentiation from the term "State property" as used in subparagraphs (*a*) and (*d*). That balanced approach sprang from two essential premises, namely, first, that of the viability of the territory upon attaining independence and, second, that of equity, which required that preferential treatment should be given to newly independent States in the norms governing that particular aspect of the process of succession. In that respect, the reference to the contribution made by the dependent territory to the creation of certain movable or immovable State property held by the predecessor State was crucial. It was first and foremost for that reason that her delegation could not accept the amendments in A/CONF.117/C.1/L.18 and L.19 and would vote in favour of the Commission's text.

19. Mr. KEROUAZ (Algeria) said that his delegation was perfectly satisfied with the article as it stood and was pleased to see that the Commission had paid due regard to the principle of the permanent sovereignty of

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[1] See *Yearbook of the International Law Commission, 1981*, vol. I (United Nations publication, Sales No. E.82.V.3), 1661st meeting, paras. 90 and 92.

[2] General Assembly resolution 3281 (XXIX).

peoples over their wealth and natural resources and had affirmed that agreements concluded between the predecessor State and the newly independent State regarding succession to State property should not infringe that principle. Of all the provisions of the proposed convention, those of article 14 had received particularly warm support from the great majority of delegations to the Sixth Committee of the General Assembly; those delegations had recognized them as a contribution to the progressive development of international law. The International Law Commission had drawn on recent historical material and fashioned a provision which met the needs of the modern age and was in close conformity with State practice. It was worth noting that the principle of permanent sovereignty was already embodied in the 1978 Vienna Convention on Succession of States in Respect of Treaties.

20. His delegation would have liked paragraph 4 of article 14 to be strengthened by the addition, at the end, of some such phrase as "and the full and unrestricted exercise of that principle", together with a reference to sovereignty over economic activities carried out in the territory of the newly independent State. Since the recognition of a principle frequently implied recognition of exceptions to that principle, it was essential to establish plainly that there could be no diminution of, or deviation from, the principle of permanent sovereignty over natural resources and that the rights which it conferred were absolute, indivisible and inalienable. Nevertheless, in deference to those delegations whose views differed from his own, he would not submit a formal proposal at that stage.

21. He reserved his delegation's right to comment at a later stage on the amendments proposed by the Netherlands and the United Kingdom.

22. Mr. PHAM GIANG (Viet Nam) noted that the provisions of article 14 would affect more than a hundred States, including his own, which had freed themselves of colonial rule and attained independence since the Second World War. Those provisions were therefore of considerable significance in modern international relations, especially since the process of decolonization was not yet complete, a few peoples and territories remaining under the colonial yoke but certain to achieve their liberation within a few years.

23. Article 14 was sound in substance and clear and precise in form. It rested on a distinction between two separate aspects of the passing of State property in successions involving newly independent States, reflected in the different formulation of the two groups of subparagraphs of paragraph 1. The first group, subparagraphs (*a*), (*d*) and (*e*), provided for the automatic passing from the predecessor State to the successor State of all immovable and movable State property of the predecessor State having a connection with the territory in question, while subparagraphs (*c*) and (*f*) guaranteed to the successor State a just share in such of that property which remained in the possession of the predecessor State but to the creation of which the dependent territory had contributed before succession. The provisions were designed to apply in an identical way to the situation of all newly independent States irrespective of the manner in which they had attained independence or whether they had been formed from one dependent territory or from several distinct territories; that was undoubtedly correct since, as the Commission pointed out in paragraph (4) of its commentary to the article, the basis for the succession in each case was the same: decolonization.

24. His delegation regarded the rules established by article 14 as fair and equitable. The preferential treatment accorded to newly independent States represented a form of compensation for the economic and financial exploitation which they had suffered over long periods, sometimes centuries, of colonial rule. The article was fully in line with article 11, which provided for the passing of State property to the successor State without compensation to the predecessor State, and should be read in conjunction with that article.

25. There was a further reason for giving unreserved support to the Commission's draft article. It was evident that throughout the history of decolonization there had always been some inequality in the relative positions of the colonial Power and former colony as they embarked on independence negotiations. Being in a position of superior strength in all respects, the colonial Power always sought to impose its own conditions on the independence process, and the former colony often had no option but to accept them and to refrain from pressing its claims to certain property. Thus the results of negotiations were almost inevitably unfavourable to the successor State and detrimental to its economic development and viability. The draft article found solutions which accorded with the practice of States and in particular with the approach of his own country after its declaration of independence.

26. The point of departure for the amendment proposed by the United Kingdom was quite different from that of the Commission's draft and its approach was patently unfavourable to newly independent successor States. A comparison of the two texts made it clear that the draft article as it stood did far greater justice to the cause of such States. His delegation could not accept the proposed amendment.

27. Mr. MOKA (Congo) said that although article 14 might be of no importance to some developed countries, it would be necessary to dependent territories since the question of the succession to State property would arise when those territories attained independence. His delegation was therefore in favour of maintaining the text proposed by the International Law Commission.

28. Mr. OESTERHELT (Federal Republic of Germany) said that he had difficulty in grasping the exact scope and meaning of paragraph 4 of the article. The commentary recorded a divergence of views within the International Law Commission respecting the procedure by which the nullity of an agreement infringing the principle of permanent sovereignty over natural resources would be established, some members maintaining that that invalidity should derive intrinsically from contemporary international law and not simply from subsequent denunciation.

29. That unresolved difference of opinion raised two questions. The first was whether the wording, and in particular the words "shall not", referred to the possibility of a denunciation of the agreement by one party thereto, revoking or otherwise invalidating its consent

to be bound by it, or whether it implied the nullity of the agreement *ab initio* irrespective of any action on the part of a party.

30. The second question concerned the nature of the nullity itself. Was it a "nullity agreed *inter partes*", in the sense that the parties to the future convention would agree not to conclude certain agreements which would violate a given principle and to consider void agreements which did not respect that principle? Or was it implied in paragraph 4 that any such agreement would be null and void absolutely, without the States concerned agreeing to that nullity or otherwise recognizing any obligation to respect it?

31. His delegation would be grateful if the Expert Consultant would comment on those questions from the standpoint of the Commission and the authors of the provision.

32. Mr. MURAKAMI (Japan) thought it essential that, in the drafting of the future convention, due regard should be paid to the importance of agreement between the parties involved, as well as to good faith, the sovereign equality of States and the self-determination of peoples. Equally important was the need to maintain legal order in the international community. Further, the provisions of the convention should be essentially residuary rules.

33. His delegation had noted with great concern the exclusion of the element of agreement of the parties from the criteria for succession of States in paragraph 1 of article 14 as proposed by the International Law Commission. That text disregarded the need to respect the agreement of the parties and would hamper the free exercise of the will of States and the international order based thereon. Moreover, it might well be a source of disputes and affect legal stability in international relations and conflicted with his delegation's view that the provisions of the convention ought to be residuary in character. It might also run counter to the principle of self-determination since it would prevent a newly independent State from exercising its will freely.

34. In his delegation's view, paragraph 1 should be modified in order to emphasize the criterion of agreement of the parties. He therefore supported paragraph 1(*a*) of the United Kingdom amendment.

35. Paragraph 1, subparagraphs (*b*) and (*e*) of article 14 contained the phrase "having belonged to" the territory in question. His delegation considered that the question whether and in what manner an entity had possessed the property in question before the period of its dependence should be determined in accordance with the rules of international and internal law applicable at that time.

36. In subparagraphs (*c*) and (*f*), the words "the contribution of the dependent territory" were too vague to be used as legal terminology. Unless the meaning of "contribution" and the way in which it could be measured were clarified, those subparagraphs could never provide satisfactory criteria for the apportionment of the property concerned between the predecessor and the successor States.

37. Similar comments could be made concerning the phrase "connected with the territory to which the succession of States relates" in subparagraph (*d*); in that context his delegation preferred the wording "a direct and necessary link with the management and administration of the territory . . ." used in the United Kingdom amendment.

38. Those comments applied also to all other provisions with similar wording.

39. In connection with subparagraphs (*b*) to (*f*), his delegation would like to register its understanding that the passing of State property situated in a third State did not affect the legal régime of that third State with respect to the property concerned, and the understanding applied also to all other provisions dealing with that problem.

40. His delegation also had great difficulty in accepting the provision in paragraph 4. Besides being extremely unclear, the text was at variance with his delegation's position concerning agreement of the parties; accordingly, his delegation would prefer the provision to be deleted.

41. His delegation reserved the right to comment on the article again later, if necessary.

42. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that, as the article related to an extremely important area of modern international law, her delegation strongly objected to the suggestion that article 14 should be deleted. To exclude the specific case of succession covered by the article from the section of the proposed convention dealing with property and to retain it only in those sections relating to archives and debts would be to destroy the coherence of the whole successful and well-balanced structure. Articles 13 to 16 had their own internal logic and it would hardly be correct or consistent to enumerate the specific effects on property and related rights in all possible cases of succession with the sole exception of the most important. The provision should therefore be maintained. Her delegation was satisfied with the Commission's draft and could not support the United Kingdom delegation's redraft of paragraph 1.

43. Paragraph 4 and the Netherlands amendment thereto raised two issues. First, even if one assumed that the principle of permanent sovereignty over natural resources was not a generally accepted rule of international law, that should not prevent the consideration and adoption of a provision like that proposed by the International Law Commission; similar action had been taken, for example, in connection with the prohibition of aggression before the definition of aggression had been given formal status.

44. The second issue was whether the invalidity of agreements of the kind envisaged in paragraph 4 was to be established by action on the part of the States concerned or in a general way by international law. That was a question relating to the law of treaties and, although her delegation had no difficulties in that regard and believed that the provision proposed in paragraph 4 should be retained, it would be useful to hear the opinion of the Expert Consultant.

45. She could not concur in the view that article 14 failed to give sufficient prominence to the principle of agreement between States on property questions

arising from succession; the commentary indicated that that aspect had been treated as a major concern by the Commission.

46. Mr. PIRIS (France) noted that the draft Convention established a distinction between cases of succession involving newly independent States and other types of succession and that it sought to give more favourable treatment to newly independent States than that which would be accorded to other successor States. While his delegation well understood the Commission's reasons for proposing such discrimination, and his country was prepared, in the appropriate forums, to do everything possible to correct the inequalities resulting from underdevelopment, it considered that discussion of such matters was out of place at that Conference. The distinction proposed by the International Law Commission was based on political rather than juridical considerations and was not justified by international practice. The type of succession of States envisaged in draft article 14 had no existence in law. The French delegation would therefore support any proposal to delete the article.

47. However, if the Conference was determined to maintain a political criterion for distinguishing between different types of succession, at most that criterion should be not that of colonial dependence but rather of domination, which would take into account, for example, the situation of certain dependent territories of the former Austro-Hungarian or Ottoman Empires.

48. In any case, retaining a provision of the kind proposed in article 14 in the form proposed by the Commission would create major difficulties. Most of them could, however, be resolved by taking into account, on the one hand, the French delegation's comments on article 13 made at the two preceding meetings and, on the other, the amendments to paragraph 1 proposed by the United Kingdom and to paragraph 4 by the Netherlands. In the first place, it was essential, and in keeping with State practice, that such an article should state in its first paragraph the principle that the transfer of State property should be settled by agreement between the predecessor and successor States, by using similar wording to that of paragraph 1 of article 13.

49. As regards the provisions of paragraph 1 as they appeared in the text proposed by the Commission, subparagraphs (*a*), (*b*) and (*d*) were acceptable to his delegation subject to the following modifications: in subparagraph (*b*), the word "State" should be inserted between "immovable" and "property"; and in subparagraph (*d*) the words "which has a direct and necessary link with the management and administration of the territory", used in the United Kingdom's amendment, should replace the expression "connected with the activity of the predecessor State in respect of the territory", which was too vague.

50. The French delegation could not accept subparagraphs (*c*), (*e*) and (*f*) in their present form. As regards (*c*) and (*f*), it shared the view of the representative of Japan that the term "contribution" made by the dependent territory to the creation of the State property of the predecessor State lacked precision. It was essential to specify the nature of that contribution: that it had been a specific contribution to the budget of the predecessor State from the territory concerned as a legal entity, for instance.

51. At the end of paragraph 1, similar wording to that proposed by France for paragraph 2 of article 13 (A/CONF.117/C.1/L.16 and Corr.1) should be added as a new subparagraph (*g*).

52. Paragraph 4 as drafted by the International Law Commission was unacceptable to his delegation which, moreover, considered a provision of that type in the Convention unnecessary. If, however, it was agreed to maintain such a provision, it should be based on the amendment proposed by the delegation of the Netherlands, which seemed more appropriate.

53. While endorsing the principle of permanent sovereignty of peoples over their natural resources, his delegation maintained that that principle must be applied in accordance with international law and that it was, moreover, valid for all States without distinction. Furthermore, it must be phrased in a non-binding way for States parties to the Convention.

54. Thus his delegation would support a proposal for the deletion of article 14. Failing that, however, the United Kingdom and Netherlands amendments were preferable to paragraphs 1 and 4 in their present unacceptable form and his delegation would vote in favour of those amendments.

55. Mr. SHASH (Egypt) fully supported the text drafted by the International Law Commission, since it was based on equity and justice for States which attained independence and many of which had previously been deprived of all their rights. Moreover, that text was based on the rule of law accepted by the majority of States and embodied in international conventions. To amend it would be a retrograde step.

56. His delegation found it difficult to approve any of the amendments in documents A/CONF.117/C.1/L.18 and L.19. It did not understand the meaning of the words "State property vested in the government of the territory to which the succession of States relates" in subparagraph (*b*) of A/CONF.117/C.1/L.19 and found subparagraph (*c*) of that amendment restrictive and unacceptable. The Netherlands amendment was unacceptable because it was insufficiently binding upon the predecessor State, whereas paragraph 4 as it stood was consistent with existing principles of international law.

57. He disagreed with those speakers who had suggested that article 14 should be deleted: the Conference could hardly adopt a convention on the succession of States without dealing with the very important question of the property, archives and debts of newly independent States. He agreed with the Commission's view that the article was necessary.

58. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation regarded the provisions of article 14 as being of crucial importance. They reflected the positive approach taken by the International Law Commission to the process of decolonization and were fully consistent with the principles of modern international law. Paragraph 1 was distinctive in that it did not insist on the primacy of agreement in the case of a succession involving a newly independent State, thus illustrating the Commission's awareness of the need to adhere to

the principles of equity and the viability of the territory under the new legal régime. His delegation was thus unable to accept the amendment proposed by the United Kingdom, which substantially changed the basic principles underlying paragraph 1. Nor could it endorse the proposal by the United States that the whole article should be deleted. However, it felt that the article could usefully be referred to the Drafting Committee with a view to improving the wording.

59. The provision in paragraph 4, which affirmed the principle of the permanent sovereignty of every people over its wealth and natural resources, was fully justified, not only in the light of the terms of the Charter of Economic Rights and Duties of States but also in the light of the current stage of development of international law in general. He drew attention to paragraph (32) of the Commission's commentary on article 14, which stated that, while the principle of permanent sovereignty over wealth and natural resources applied in the case of every people, it was necessary to include a provision affirming that principle in the context of succession of States involving newly independent States. His delegation felt that the original wording submitted by the International Law Commission was more explicit in that regard, and therefore preferable to that proposed by the representative of the Netherlands.

60. Mr. FISCHER (Holy See) said that his delegation had been surprised to hear one delegation opposing the inclusion of any reference to "international law" in article 14 on the grounds that such a reference would be restrictive. His own delegation firmly believed in the principle of the permanent sovereignty of every people over its wealth and natural resources, but took the view that any action taken by a State in the exercise of that sovereignty, such as nationalization of foreign property in its territory, must conform to international law. Since the lack of any reference to international law in paragraph 4 would open the door to arbitrary actions by States, his delegation strongly favoured the Netherlands amendment.

61. Mrs. VALDÉS (Cuba) said that article 14 as formulated by the International Law Commission took due account of the situation of States acceding to independence. Paragraph 1 in particular was both equitable and compatible with the rest of the draft and her delegation would oppose any amendments, such as those submitted by the Netherlands and the United Kingdom, which would have the effect of weakening the future international instrument.

62. Mr. POEGGEL (German Democratic Republic) said that article 14, like the corresponding articles 25 and 35, was a most impressive reflection of the progressive development of international law with regard to the legal effects of a succession of States. It was right that newly independent States should receive preferential treatment in the articles because of their need to achieve economic as well as political independence. In that connection, he considered that paragraph 4 of article 14 deserved special attention. The paragraph was indispensable because it affirmed the often disregarded right to self-determination and permanent sovereignty over natural resources. His delegation could not support the Netherlands amendment to paragraph 4, which tended to weaken the substance of the paragraph as drafted by the International Law Commission, first by replacing the phrase "shall not infringe" by the much weaker expression "shall pay due regard to", and secondly by omitting the phrase "of every people". Paragraph 4 as it stood was fully consonant with article 13 of the 1978 Vienna Convention.

63. His delegation felt that the amendment submitted by the United Kingdom changed the entire structure of article 14 and also its underlying concept. The amendment referred only to State property as such and did not pay due regard to the distinction between immovable and movable property, a distinction which was made quite clear in paragraph 1 of article 14 as drafted by the International Law Commission. His delegation would oppose the amendment and would support article 14 as it stood.

64. Mr. do NASCIMENTO e SILVA (Brazil) said that his delegation would vote in favour of article 14 as it stood. The object of the amendment of the United Kingdom was to transform the provisions of article 14 into residuary rules. He pointed out however that once a State was fully sovereign it was free to enter into agreements regarding the status of immovable and movable property, and indeed into agreements on cooperation with the predecessor State in the exploitation of its own natural resources.

65. Referring to the amendment submitted by the Netherlands, he said that it had the merit of focusing attention on paragraph 4 of article 14. In drafting paragraph 4, the International Law Commission had taken into account the numerous relevant resolutions and declarations of the General Assembly, and the resulting article represented a peremptory norm of international law. The effect of the amendment would be to transform the article into a residuary rule. Actually, it was arguable that a treaty concluded prior to the independence of a State and affecting that State's sovereign rights over its own natural resources was of doubtful validity. Some members of the Commission and delegations in the Sixth Committee had even considered the article as embodying a rule of *jus cogens*.

66. In view of the paramount importance of the principle in paragraph 4, his delegation thought that it should not form the subject of merely one of the provisions of article 14, but that it should be incorporated in the draft as an independent article. At the current stage, however, his delegation felt that article 14 should be retained as drafted.

67. Mrs. BOKOR-SZEGÖ (Hungary) said that her delegation supported article 14 as it stood and was particularly opposed to any suggestion that it should be deleted. In its drafting the International Law Commission had responded to the wish of the General Assembly, expressed in numerous resolutions, that special treatment should be accorded to newly independent States in the codification of international law. The deletion of article 14 would clearly be contrary to that intention. Similarly, the amendment proposed by the United Kingdom would alter the essential structure of the article, while the Netherlands amendment would weaken respect for the principle of the permanent sovereignty of every people over its wealth and natural resources, which was a peremptory norm of international law admitting of no derogation.

68. Mr. MASUD (Observer for the Asian-African Legal Consultative Committee) said that it was clear from the discussion that, in the opinion of most delegations, the Netherlands amendment would upset the balance of the article. Article 14 was intended to protect the interests of newly independent States, which were often in a weak bargaining position *vis-à-vis* predecessor States. Article 14 set forth a peremptory norm of international law, and the Netherlands amendment would have the effect of diluting its provisions.

69. The United Kingdom amendment was still more radical in its implications, in that it would virtually eliminate the principle of equity from the article.

70. Referring to subparagraphs (*c*) and (*f*) of paragraph 1, he said that clarification was required as to the criteria to be applied in determining the contribution of the successor State; in that respect the existing text was not sufficiently precise.

The meeting rose at 1 p.m.

14th meeting

Thursday, 10 March 1983, at 3.10 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 14 (Newly independent State) (*continued*)

1. Mr. IRA PLANA (Philippines) said that his delegation was opposed to the deletion or emasculation of the International Law Commission's text of article 14. The Commission had recognized the role of newly independent States in the present world order and the fact that such States were in a position of disadvantage compared with predecessor States. Its draft of article 14 met the requirements of equity.

2. Mr. LAMAMRA (Algeria) reiterated his delegation's support for the spirit and letter of the International Law Commission's text of article 14 and particularly for paragraph 4 of that text. Opposition to the principle of the permanent sovereignty of peoples over their wealth and natural resources was seemingly entrenched. Some delegations had favoured deletion of the reference to that principle on the ground that it was of no practical value since the process of decolonization was virtually complete. However, according to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, many territories still did not enjoy the right of self-determination.

3. The United Kingdom amendment (A/CONF.117/C.1/L.19) sought to substitute for the coherent system of devolution worked out by the International Law Commission empirical formulations based on the inequitable arrangements which had sometimes been imposed in the past as a result of negotiations between a powerful predecessor State and a defenceless young State. It ignored the International Law Commission's concern with the viability of the territory of newly independent States and eliminated reference to the categories of State property mentioned in the subparagraphs of paragraph 1. That amendment embodied a fundamental difference of approach which delegations should bear in mind when taking a decision on article 14.

4. The Netherlands amendment (A/CONF.117/C.1/L.18) was no more felicitous. The expression "due regard" in that amendment suggested that the principle of permanent sovereignty was but one criterion among others and not really of major concern, whereas the International Law Commission's text treated the principle as being of cardinal importance. Furthermore, the concluding phrase in the Netherlands amendment, "in accordance with international law", revived the longstanding argument as to which international law was intended. There was the old international law, which protected privilege based on domination and conquest, and the new international law enshrining the principle of equity, which was affirmed by the International Law Commission. The Charter of the United Nations had notorious gaps in respect of economic co-operation and development co-operation and in 1980 the third world delegations to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had proposed that a reference to permanent sovereignty over natural resources should be incorporated in its text. International law was in fact constantly evolving and a general reference to it was incompatible with the precision desirable in paragraph 4. The Netherlands representative had asserted that a United Nations document had made the surprising claim that permanent sovereignty related to air and water but excluded oil. That ran counter to the Programme of Action on the Establishment of a New International Economic Order adopted by the General Assembly in its resolution 3202 (S-VI) at its sixth special session. In any case, if only the territorial dimension of sovereignty was taken into consideration, it was difficult to see how energy resources could be excluded.

5. The French representative had endeavoured to prove that newly independent States should not be regarded as a special category in the succession of States (13th meeting). That was an ideological approach alien to the Charter of the United Nations and to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among

States in accordance with the Charter of the United Nations,[1] which specifically stated that a dependent or non-self-governing territory had a status separate and distinct from the territory of the State administering it until its people had exercised its right of self-determination.

6. In conclusion, he urged the Conference to ensure that the legal and political dialogues evolved together. The convention should enshrine the principle of the permanent sovereignty of every State over its natural wealth and resources, a principle already referred to in article 13 of the 1978 Vienna Convention on Succession of States in Respect of Treaties.[2]

7. Mr. BERNHARD (Denmark) said that, as in the case of the other types of succession, the main stress in article 14 should be on agreement between the parties. A number of the criteria set forth in the subparagraphs of paragraph 1 of the International Law Commission's text were too broad and vague and were inappropriate as legal criteria. His delegation therefore supported changes along the lines proposed in the United Kingdom amendment, although in that text the word "government" in subparagraph (*b*) should be replaced by a reference to the authority governing the dependent territory.

8. In spite of the view of the International Law Commission as expressed in paragraph (25) of its commentary on article 14, he had difficulty in understanding the Commission's motives for the inclusion of paragraph 3 in that article. In the case envisaged, the economic and social circumstances were not necessarily similar to those of newly independent States. It might be a case of a territory joining a State larger and richer than the predecessor State.

9. However, it was paragraph 4 that presented the most serious problem. His delegation considered it unnecessary and unacceptable to restrict the freedom of the parties concerned in a way which was unusual in international law and which differentiated one specific type of succession of States from other categories. Furthermore, the formulation of paragraph 4 was unclear. Some delegations had suggested that it was in conformity with article 13 of the 1978 Vienna Convention but it differed from that text in four important particulars. Article 13 of the 1978 Convention placed no restriction on the freedom to conclude agreements; it was a general article valid for all States and all types of succession; it referred to "natural wealth" and not to "wealth"; and, finally, it referred simply to "the principles of international law".

10. If the principle of permanent sovereignty was to be mentioned at all, he would support the redrafting of paragraph 4 proposed in the Netherlands amendment. He had difficulty in understanding why some delegations objected to the reference to international law in that text.

11. Mr. BOCAR LY (Senegal) said that some delegations had criticized the International Law Commission's formulation of paragraph 1, subparagraphs (*b*) and (*e*), as being too imprecise. As he understood it, the Commission had intended to refer to property acquired by the predecessor State by procedures not legally recognized. He did not know whether any of the changes which had been suggested made that meaning more clear. With regard to paragraph 1, subparagraphs (*c*) and (*f*), of the International Law Commission's text, it was indisputable that the contribution of the dependent territory should be taken into account, in deference to the principle of equity, which had become an essential element of modern international law. However, it was not so much the principle as the criteria of apportionment which were the stumbling block. The Expert Consultant might be asked to give his views but it would be difficult to find criteria for inclusion in the proposed convention which would satisfy everyone. Paragraph 4 took due account of the possibility of agreement between the parties, subject to observance of the principle of permanent sovereignty, which must be regarded as accepted by the international community in the light of the various international instruments adopted on that subject. Paragraph 4 of the International Law Commission's text referred to newly independent States but it made clear that the principle to which it alluded applied to all States.

12. Mr. RASUL (Pakistan) said that his delegation supported the text of article 14 proposed by the International Law Commission. The United Kingdom amendments to paragraph 1 ran counter to the very spirit of that paragraph, while the Netherlands amendment to paragraph 4 reduced the principle affirmed in that paragraph to a matter of mere moral obligation by using the words "due regard". He shared the Indian representative's surprise at the Netherlands representative's observation (13th meeting) that the principle of permanent sovereignty over natural resources had not yet been recognized as a rule of international law but was a matter of international relations. The delegation of Pakistan understood that principle to be derived from—indeed, to form an integral part of—the fundamental principle of international law, namely, territorial sovereignty. That principle was as old as were established relationships between human communities. Consequently, the principle of permanent sovereignty over natural resources was not a twentieth-century innovation.

13. Mr. MONNIER (Switzerland) said that article 14 constituted an important exception to the other articles of the draft convention, which gave prominence to agreement between the States concerned. Article 14 mentioned agreement only in its paragraph 4. By instituting a special régime for one category of succession of States, article 14 gave the provisions of a multilateral instrument precedence over agreements between the predecessor State and the successor State. That not only resulted in restricting the freedom of action of States but also added an imprecise extra-legal dimension to the definition of State sovereignty in international law. In the last analysis, it actually seemed to restrict that concept. Furthermore, the very secondary role assigned by article 14 to agreement between the predecessor and successor State was further limited in paragraph 4, which provided that such agreements could not infringe the principle of perma-

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[1] General Assembly resolution 2625 (XXV), annex.

[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

nent sovereignty over wealth and natural resources. The representative of the Federal Republic of Germany had put very pertinent questions to the Expert Consultant concerning the mandatory nature of paragraph 4 (13th meeting). Some delegations claimed that the principle of permanent sovereignty was *jus cogens*. If such was the case, according to a provision of the 1969 Vienna Convention on the Law of Treaties,[3] incompatibility with such a rule of general international law would void any agreement *ab initio*. But that provision was very far from being accepted by all members of the modern international community and indeed constituted for many States an obstacle to their accession to the 1969 Convention, notwithstanding the existence of provisions allowing recourse to the International Court of Justice or arbitration in cases where incompatibility with *jus cogens* was invoked.

14. The Netherlands amendment was a distinct improvement on the International Law Commission's text of paragraph 4 in that it limited the concept of permanent sovereignty and placed it on a more acceptable basis. He failed to understand those delegations which simultaneously held that the principle of permanent sovereignty was *jus cogens* and opposed the reference to international law in the Netherlands amendment. The presence of paragraph 4 as at present formulated made it impossible for his delegation to support article 14.

15. With regard to the Algerian representative's reference to the evolution of the legal and political dialogues, it was his view that the task of the delegations at the present Conference was to work out acceptable compromises with the practical aim of ensuring that the convention would be ratified by national parliaments and subsequently implemented.

16. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation considered article 14, as proposed by the International Law Commission, as an important contribution to the work of the Conference. It was a necessary part of the régime of the succession of States concerning specific categories of succession included in Part II of the draft text. In its commentary the Commission had given much information concerning international practice in the field of succession which had developed as a result of decolonization. It had also provided detailed explanations of questions which had been raised during its deliberations. Those questions were similar to the ones which had been raised in the Committee of the Whole. The article had been criticized as unnecessary, unwise, irrelevant and unclear, and the main objections appeared to relate to the possibility, in the case covered by article 14, of agreements not provided for in the present draft. His delegation did not share those objections. It endorsed the explanation in paragraph (5) of the commentary of the reason why reference to an agreement was unnecessary in that particular case of succession. Article 14 as proposed by the International Law Commission did not exclude agreement, which always took precedence over other methods or recommended procedures for settling disputes or conflicts. Paragraph 4 of the article specifically referred to agreements whose validity depended only on recognition of the principle of permanent sovereignty of every people over its wealth and natural resources. By not referring expressly to the case of succession of States by agreement under the provisions of article 14, the International Law Commission had emphasized recognition of the very special circumstances which accompanied the birth of newly independent States and had refrained from making the agreement a condition for the application of the rules formulated in article 14.

17. The Bulgarian delegation felt that the concern which had been expressed regarding the viability of the newly independent State should find concrete expression in the text of the convention itself and not merely be reflected in the proceedings of the Conference. Support for the International Law Commission's text would go a long way towards alleviating those concerns.

18. In connection with paragraph 4, he shared the view of the representatives of India and Brazil that the principle of permanent sovereignty of every people over its wealth and natural resources was an established principle of international law and was not a new one. That principle was embodied in the 1958 Geneva Convention on the Continental Shelf,[4] in which the sovereignty of the coastal State over its resources on the shelf was recognized as absolute, regardless of *de facto* occupation or the ability of the coastal State to exploit those resources.

19. Paragraph 4, as proposed by the International Law Commission, was well balanced and non-discriminatory and had the approval of his delegation.

20. Mr. SUCHARITKUL (Thailand) said that his delegation supported article 14 as drafted by the International Law Commission. His Government attached particular importance to the particular type of State succession dealt with in the article and felt that it deserved special attention and special treatment. Parties to State succession under article 14 were free to negotiate and conclude agreements even outside the principles considered to be general norms and embodied in paragraphs 1 to 3 of the article. Whatever agreement might be concluded would be valid, and the general principles of the law of treaties applied. However, like every other treaty or agreement, it would be governed by the peremptory norm, referred to in paragraph 4, of the permanent sovereignty of every people over its wealth and natural resources. That included the people of the predecessor State, the successor State and third States. The provision had been included in that particular article of the proposed convention because specific reference and protection were deemed necessary in the case covered by the article. A newly born State was not the same as on old State: just as a child should be born free, a State, too, should be born free and unencumbered and therefore protected by paragraph 4.

21. Mr. MARCHAHA (Syrian Arab Republic) said that the difficulties of newly independent States were well known and required specific measures in international law which could be taken only by the estab-

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[3] See *Official Records of the United Nations Conference on the Law of Treaties, 1968 and 1969, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

[4] United Nations, *Treaty Series*, vol. 499, No. 7302, p. 312.

lishment of rules to assist and support the States concerned. The trend of modern international law was to establish special rules in favour of countries of the third world, and it was natural that the International Law Commission should follow that trend and create a new legal régime for the succession of States in that category. His delegation was therefore unable to support the Netherlands amendment, which tended to weaken the original paragraph. Newly independent States required the support and protection of international law through peremptory norms.

22. Mr. OWOEYE (Nigeria) said that his delegation disagreed entirely with the French representative's view that article 14 was unnecessary because newly independent States did not represent a case of State succession. It also disagreed vith the view of the representative of the United States of America that article 14 should be deleted (13th meeting). The General Assembly had given the International Law Commission a special mandate with regard to its work of codification and progressive development of rules of international law relating to the succession of States, which was to examine the problems of the succession of States with appropriate reference to the newly independent States. The 1978 Vienna Convention had reflected the need which had been felt to include in that instrument special provisions concerning newly independent States, and the same position had been taken by the International Law Commission in the case of article 14 of the present draft.

23. He did not share the view of the representative of France that the consideration of article 14 had developed into a political discussion. There was no divergence or clear distinction between the principle of State succession in respect of State property and the fundamental political and economic objectives of newly independent States, especially in the early stages of their independence when they needed to establish themselves firmly, both politically and economically. That applied particularly in the case of the succession of newly independent States to natural resources, which had a vital role to play in their economic survival.

24. The Nigerian delegation was in favour of retaining article 14 as drafted by the International Law Commission, because of its clarity, fairness and balance. Its clarity in differentiating between movable and immovable property and the reference in each case to an appropriate principle to determine the passing of property were commendable. In the case of immovable property, the Commission had established the criterion of linkage between property and the territory in which it was located, while in the case of movable property the principles of viability and equity had been established as the basic criteria for the passing of property. The Commission had gone further by making special provision, in paragraphs 2 and 3 of the article, for the different situations which might arise in the case of newly independent States. The text of paragraph 4 did not necessarily imply nullification or non-validity of previous agreements concluded between the predecessor State and the successor State. Rather it stated that such agreements, if and where they existed, should not infringe the principle of permanent sovereignty of every people over its wealth and natural resources. As his delegation understood it, only where such agreements violated that cardinal principle of contemporary international law should they be deemed null and void. Numerous General Assembly resolutions, including that on the Charter of Economic Rights and Duties of States,[5] had already firmly established that principle.

25. The amendments proposed by the United Kingdom and by the Netherlands negated principles established by international law. The United Kingdom amendment appeared to place emphasis on agreement between the predecessor State and the successor State, which presupposed an ideal situation in which succession took place in a predetermined form agreed to by both parties. Even in such a situation as that, the agreement might not be concluded on a basis of equality. Furthermore, not all cases of State succession took place in a predetermined manner capable of leading to an agreement between the two parties. The Netherlands amendment seemed to emphasize the goodwill and fairness of the predecessor State, which was mere assumption. The Nigerian delegation therefore rejected both amendments and supported article 14 as proposed by the International Law Commission.

26. Mr. ECONOMIDES (Greece) said that article 14 was the most difficult one to be considered by the Committee of the Whole. The difficulty stemmed from the fact that it was one of the most political provisions in the draft convention and it had already been politicized to such an extent that it now seemed to run counter to a basic principle of international law, the principle of the equality of States. He fully understood the reasons for the provision, particularly in the light of the precedent set by the 1978 Vienna Convention. However, in spite of the provision's commendable elements, his delegation had concluded that from the point of view of application, article 14 left much to be desired. He urged all delegations, when proposing textual amendments, to bear in mind the future application of the article and to be prepared to negotiate in good faith with a view to achieving a generally acceptable text.

27. The United Kingdom amendment contained a positive element but further efforts were required on both sides of the debate if better balance and clarity were to be achieved. It might even be desirable to suspend discussion of the article temporarily in order to allow all delegations time for further thought. His delegation had serious difficulties with paragraph 4 in particular and it could not accept the Brazilian representative's contention that international law did not apply to natural resources. While that might perhaps be true of those resources which were situated entirely within a single State and had no effect on any other State, international law applied directly and absolutely to those resources which were exploited by more than one State. The principles contained in paragraph 4 were so important that they should apply equally in all the cases covered by the draft convention.

28. The Greek delegation would favour the addition, at the end of Part II, of a new article providing that all treaties or agreements concluded in accordance with the convention and resulting in the creation of a new

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[5] General Assembly resolution 3281 (XXIX).

State must take fully into account the principle of permanent sovereignty over natural resources in accordance with international law. An express reference to international law in paragraph 4 was a safeguard and, as such, absolutely necessary.

29. Mr. MUCHUI (Kenya) said that his delegation could not agree that the International Law Commission had dealt with the question of newly independent States from a political rather than a juridical standpoint: the Commission's approach had been positive, objective and progressive, and supported by cogent and well-presented arguments. Any politicization of the subject had been the work of others than the International Law Commission.

30. His delegation was also unconvinced by the argument that article 14 might be redundant because the decolonization process was virtually complete. The proponents of that argument had completely overlooked the fact that even if decolonization were complete—which it was not—there would still be residual problems, particularly in respect of State property.

31. The United Kingdom amendment ran counter to both the spirit and letter of the proposed article 14, as well as to the generally accepted principle of fairness and equity in international relations. It failed, moreover, to take account of the arguments presented by the International Law Commission in paragraph (5) of its commentary on the article. His delegation was therefore quite unable to support that amendment.

32. The amendment submitted by the Netherlands attempted to dilute the principle of the permanent sovereignty of a people over its wealth and natural resources, since it postulated the premise that that principle was a norm of international relations rather than of international law. That amendment was therefore totally unacceptable to his delegation.

33. He emphasized his delegation's unqualified support for article 14 as proposed by the International Law Commission.

34. Mr. SAINT-MARTIN (Canada) said that, in his delegation's view, priority should be accorded in article 14 to agreements concluded between the predecessor and the successor State in respect of problems related to State succession. Paragraph 1 of the article, as proposed by the International Law Commission, should be revised accordingly. The concept of property "connected with the activity of the predecessor State", which was referred to in paragraph 1, subparagraph (*d*), was unduly vague. The contribution of the dependent territory to the creation of State property, to which reference was made in subparagraphs (*c*) and (*f*), was also a vague concept and reference to it was likely to cause more problems thant it would solve. The Canadian delegation was unable to accept the current wording of paragraph 4 of article 14. Moreover, some delegations had stated during the debate that paragraph 4 constituted or included an element of *jus cogens*, particularly as far as the concept of permanent sovereignty over wealth and natural resources was concerned. That was a concept which, as the representative of Switzerland had recalled, was far from being accepted as *jus cogens* by several countries, including Canada. The Canadian delegation reserved the right to revert to article 14 at a later stage in the discussion.

35. Mr. PAREDES (Ecuador) said that his delegation could not agree with the proposal that article 14 should be deleted. Neither could it accept the amendments to paragraphs 1 and 4 which had been submitted, as they would weaken the text. Paragraph 4 reflected one of the fundamental principles of the new international economic order, which had already been accepted by the international community.

36. His delegation supported the draft submitted by the International Law Commission, which was clear, logical and in accordance with the principle of equity in international relations.

37. Mr. RASSOL''KO (Byelorussian Soviet Socialist Republic) said that his delegation considered article 14 a key element of the draft convention. The International Law Commission's draft reflected the principle that every people possessed the attributes of national sovereignty inherent in its existence as a people and consequently enjoyed the right of permanent sovereignty over its wealth and natural resources.

38. The argument that article 14 was unnecessary was not convincing. First, since the 1978 Vienna Convention, which was closely linked with the draft convention under discussion, contained provisions relating to newly independent States, it would be anomalous if no such provision were included in the new instrument. Secondly, experience had shown that it was precisely in connection with the transfer of State property that newly independent States encountered most problems.

39. The amendment to article 14 submitted by the Netherlands delegation was not acceptable to his delegation, inasmuch as it proposed a limited interpretation of an accepted norm of international law. The United Kingdom amendment was likewise not acceptable.

40. His delegation fully supported article 14 as proposed by the International Law Commission.

41. Mr. FONT (Spain) said that, although article 14 appeared to be a bone of contention, a careful consideration of the views which had been expressed led to the conclusion that the divergencies were not so great as they appeared. He gave two examples affording proof. In the first place, the degree of priority that should be accorded to agreements concluded between the predecessor and the successor State was a point at issue. But the International Law Commission's draft text referred expressly in paragraph 4 to agreements concluded between the predecessor State and the successor State to determine succession otherwise than by the application of paragraphs 1 to 3. There therefore appeared to be no reason why bilateral agreements should not be referred to earlier in the article.

42. A second example was connected with the difficulties being experienced with the last phrase of paragraph 4. Similar problems that had arisen in connection with the 1978 Vienna Convention on the Succession of States in Respect of Treaties had been resolved through negotiations resulting in article 13 of that Convention, which had been adopted by consensus. In view of those considerations, he appealed for a new spirit of co-operation in order to solve the problems facing the Committee.

43. The Spanish delegation, for its part, would have no objection to an article dealing with the questions raised in article 14 appearing in the future convention.

44. Mr. CHO (Republic of Korea) emphasized the need for separate provisions to deal with the special circumstances attending the succession of newly independent States and to meet the requirement of the principle of equity. Paragraph 4 was one of the International Law Commission's most commendable contributions to the progressive development of international law. The principle of the permanent sovereignty of every people over its wealth and natural resources was a widely accepted norm of international law which had been reaffirmed in many resolutions and instruments.

45. His delegation did not agree with the view that paragraph 4 deprived the parties concerned of the right to conclude agreements; it merely emphasized that such agreements should not infringe the principle of permanent sovereignty over wealth and natural resources. Accordingly, his delegation supported the draft of article 14 as proposed by the International Law Commission and opposed the amendments submitted by the Netherlands and the United Kingdom.

46. Mr. A. BIN DAAR (United Arab Emirates) said that the widely accepted principle of the permanent sovereignty of every people over its wealth and natural resources, which was at the forefront of United Nations doctrine, should not be compromised in an international convention, considering that that principle was in conformity with the actual practice of the vast majority of States, thereby establishing it as a customary rule of international law.

47. As the International Law Commission had noted in its commentary, it had been fully conscious, when drafting article 14, of the precise mandate it had received from the General Assembly to examine the problems of State succession with appropriate reference to the views of States that had achieved independence since the Second World War. That position was clearly reflected in paragraph 4.

48. His delegation was unable to accept the United Kingdom amendment for reasons of principle, and found the Netherlands amendment to be too imprecise. It accordingly fully supported article 14 as drafted by the International Law Commission.

49. Mr. LEITE (Portugal) said that in his delegation's view paragraph 4 should have no place in a legal convention, since it was based on ideological and political considerations.

50. His delegation supported the principle of the permanent sovereignty of every people—and not only of newly independent States—over its wealth and natural resources. It could not accept a provision that made a limited attribution of what was a general right.

51. He emphasized that his delegation's position was based on legal considerations rather than arguments of a political or emotional nature, and he echoed the appeal for compromise made by the representative of Spain.

The meeting rose at 5.50 p.m.

15th meeting

Friday, 11 March 1983, at 10.10 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 14 (Newly independent State) (*continued*)

1. Mr. BEDJAOUI (Expert Consultant) said that he would confine his comments to the more salient points raised during the discussion at the previous two meetings and would try to clarify the intentions of the International Law Commission in drafting article 14.

2. A radical solution had been proposed—to delete the article—and the Conference was of course fully entitled to do so if it wished. However, he pointed out that the General Assembly had given the International Law Commission a mandate to take into account the experience of the newly independent States and to accord them special treatment in the succession of States in order to further the codification and progressive development of international law. In drafting article 14 the Commission had endeavoured to comply with that mandate.

3. The deletion of the article, and of the corresponding articles 26 and 36, would cause a major element of the proposed convention to disappear, and hence its usefulness as an international instrument would be questionable. If that deletion were to be made, serious problems of interpretation would result when drawing parallels with the 1978 Vienna Convention on Succession of States in Respect of Treaties,[1] which contained special provisions to cover the case of newly independent States. In his view the question of the succession of States after decolonization was of such importance to the modern world that it could be ignored in the convention only at the risk of gravely undermining the scope and integrity of the draft.

4. It had been suggested that the process of decolonization was virtually complete and that the provisions of article 14 were accordingly redundant. He could not

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

accept that point of view. All types of succession of States had in many instances given rise to disputes which had taken decades, and in some cases centuries, to resolve. For example, the archives of the Duchy of Savoy, which had become French territory in 1860, had not been transferred to France until 1947, while the succession of States after the dissolution of the Austro-Hungarian monarchy had led to a multiplicity of disputes. The persistence and complexity of such contentious issues amply justified the inclusion of article 14 in the future convention.

5. The amendment proposed by the United Kingdom (A/CONF.117/C.1/L.19) was at first sight interesting, and he had tried to see how it could be reconciled with the intentions underlying the International Law Commission's version of the article. He had concluded, however, that the amendment would have the effect of limiting the meaning of the terms "movable" and "immovable" property that would pass to a successor State. The International Law Commission's intention in its version was not to confer a gift on a newly independent State but rather to uphold the principle of equity by ensuring the return of property which had been taken by the predecessor State during the period prior to the independence of the successor State.

6. If the reference to "State property vested in the government of the territory" were to be retained, as suggested in the United Kingdom amendment, there was a risk of confusing the State property of the predecessor State held by the former administering Power in the territory for management and the separate property of that territory. The latter had already belonged to the territory before the succession of States; the succession did not affect it. It would continue to belong to the territory after independence. On the other hand, what was affected by the succession of States was the fate of the State property of the predecessor State.

7. The delegation of Nigeria had inquired (14th meeting) what happened to such property as antiquities and works of art that had been removed from the territory of the formerly dependent State. In his view the rules provided by the International Law Commission's draft of paragraph 1 were appropriate and dealt adequately with such property. In reply to questions concerning the assessment of the contribution made by the dependent territory to the "creation" of property, he said that, while the International Law Commission's formulation was not very precise, it would be difficult to draft the relevant provision in more specific terms. He suggested that perhaps the Drafting Committee might be asked to consider the drafting of the provisions in question.

8. Commenting on the amendment to paragraph 4 submitted by the Netherlands (A/CONF.117/C.1/L.18), he said that some delegations had wished to see a greater correspondence between article 14 and other articles, and in particular article 13, which accorded primacy to agreement between the States concerned. Those delegations seemed to consider that article 14 gave too little weight to agreements, but he felt that their concern was misplaced. As drafted by the Commission, the article did not say that there should be no agreement between predecessor and successor States; it merely required that such agreements should be in conformity with contemporary international law, which contained certain new principles, such as the permanent sovereignty of each people and each State over its wealth and natural resources. In its commentary the International Law Commission cited a large number of such agreements, which had been a notable feature of the post-war period. However, the Commission had recognized that in many cases the agreements themselves had been unfavourable to the successor State and it had endeavoured to respond to the concerns of the General Assembly, as expressed in such resolutions as resolution 3281 (XXIX) containing the Charter of Economic Rights and Duties of States. The object of paragraph 4 as it stood was to ensure that agreements between the predecessor State and the newly independent State were compatible with respect for the latter's economic and political independence.

9. He felt that the scope and efficacy of article 14 would be impaired if paragraph 4 were to be removed and included as a separate provision of the draft, as had been suggested by the representative of Brazil (13th meeting): paragraph 4 could be said to establish the tone of article 14 as a whole and should thus be retained in that context.

10. On the question of the propriety of including a reference to international law in paragraph 4, on the lines of the formulation proposed in the Netherlands amendment, he said that those who advocated such a reference must concede that permanent sovereignty over wealth and natural resources was itself a principle of international law. He wondered, however, if that was in fact the position of those who wanted such a reference included. There was a contradiction in terms in that amendment. On the one hand, the sponsors stated that permanent sovereignty over wealth was not a principle of international law; on the other, in the text of the amendment that principle was appreciated "in accordance with international law". The International Law Commission had agreed that the draft should affirm that permanent sovereignty was indeed a principle of international law and had drafted article 14 accordingly. Paragraph 4 stipulated that agreements between the predecessor State and the newly independent State should not infringe the principle of permanent sovereignty and, in his opinion, it followed that the infringement of that principle would invalidate such an agreement.

11. The fact that the principle of permanent sovereignty formed part of international law was borne out by its incorporation in the 1958 Geneva Convention on the Continental Shelf[2] and, of course, in article 13 of the 1978 Vienna Convention, where it actually appeared in a more complete form than in the draft convention under discussion, the wording used being ". . . the permanent sovereignty of every people and every State over its natural wealth and resources". In that connection, he felt that it might perhaps be desirable to bring the draft convention fully into line with the 1978 Convention, for both dealt with the succession of States. He added that the principle of permanent sovereignty had undergone a process of gradual refinement over the years and was still evolving; for example, the Charter of

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[2] United Nations, *Treaty Series*, vol. 499, No. 7302, p. 312.

Economic Rights and Duties of States, in its article 2, spoke of the State's "full permanent sovereignty . . . over all its wealth, natural resources and economic activities". Indeed, the representative of India had suggested (13th meeting) that a reference to economic activities might be added to paragraph 4 of article 14.

12. As paragraph (32) of the commentary made clear, the principle of permanent sovereignty applied not only to peoples of newly independent States but to all peoples in general; however, newly independent States quite naturally needed more protection in that respect. Mention of the word "people", regretted by some of the critics of the International Law Commission's draft, was taken from the Charter of the United Nations and had been introduced by the inviting Powers to the San Francisco Conference of 1945. In that connection, he reminded the Netherlands delegation that at the San Francisco Conference the Netherlands had been responsible for an amendment to Article 55 of the Charter in which the word "peoples" was to be found.

13. The Netherlands amendment was self-contradictory in that it appeared to recognize the principle of permanent sovereignty over natural resources and, at the same time, to deny it by introducing the phrase "in accordance with international law". Everyone was aware that international law was in constant process of evolution and that its contents today were not the same as they had been in the past or would be in future. The problem of the precise legal force of General Assembly resolutions was an old and still unresolved one.

14. In conclusion, he stressed that if the Conference decided to reject the reference to international law proposed in the Netherlands amendment, it would not, of course, indicate thereby that it lacked respect for international law, but only that it considered the reference to it inappropriate in such a context, since delegations did not give in the current forum the same tenor to that law.

15. Mr. ROSENSTOCK (United States of America) said that, like Algeria, the United States was among those States which had fought for its independence but that should not cause either to allow emotional or psychological factors to cloud legal analyses or produce a backward-looking text.

16. He stressed that article 14 was both unnecessary and unwise and created distinctions not founded in law, logic or balanced notions of justice. The United States had no current or foreseeable succession problems which were affected by the current draft and did not object to special treatment for newly independent States where a reasonable basis for special treatment existed, as in the case of treaties. Article 14 of the International Law Commission's draft was not an accurate statement of law or even a sufficiently compelling statement *de lege ferenda* to militate for its acceptance. Neither State practice nor any notion of justice would support such an article. In addition, the situations covered by article 14 would not be prevalent in the future and therefore it could be deleted without decreasing the importance of the convention.

17. Article 14 included highly controversial issues which were not essential to a meaningful convention and which were being dealt with in other forums. It was consequently not necessary to have another discussion on whether any General Assembly resolutions or other instruments since General Assembly resolution 1803 (XVII) affected the legal requirements that any nationalization should be for public purposes and should be non-discriminatory and that prompt, adequate and effective compensation should be paid.

18. The United States objected to arguments which represented an attempt to give legal force to notions found in various merely recommendatory material emanating from the General Assembly. The Conference could not ignore the fact that General Assembly resolutions were purely recommendatory and did not give rise to legal obligations. That absence of obligation was especially clearly evident where, like the resolutions of the Assembly's sixth special session, they had given rise to strong reservations or, as in the case of the so-called Charter of Economic Rights and Duties of States, to negative votes and abstentions on the part of some delegations.

19. If, as some speakers argued, paragraph 4 of article 14 were to form part of *jus cogens*, its application would hardly depend on its inclusion in a particular text; in that connection, the dubious nature of its character as *jus cogens* could be seen by looking at the text of article 53 of the 1969 Vienna Convention on the Law of Treaties.[3]

20. Moreover, he could not accept the argument that special protection was required for newly independent States which might be forced to sign away basic rights by the predecessor State. That problem, if it existed, was too broad to be dealt with in the current context and was, in any event, covered in the 1969 Convention on the Law of Treaties, which provided all the protection that was necessary.

21. In conclusion, he reiterated the recommendation that article 14 be deleted and appealed to all participants in the Conference who were concerned with the effective application of the proposed convention to bear in mind that only a text which commanded broad support and respect could conceivably attract a sufficient number of accessions or ratifications to make the convention meaningful.

22. Mr. TARCICI (Yemen) said that his Government's views entirely coincided with those of the International Law Commission as expounded by the Expert Consultant.

23. The CHAIRMAN said that, in the absence of any objection, he proposed to close the list of speakers on the subject under consideration.

It was so decided.

24. Mr. BROWN (Australia) expressed some alarm at the extreme polarization of views which had become apparent in the discussion and which did not augur well for the success of a codification conference. His own delegation had reservations with regard to the wording of article 14, but they were mainly of a drafting nature and could partly be met by supporting the United King-

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[3] *Official Records of the United Nations Conference on the Law of Treaties, 1968 and 1969, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

dom amendment. It was to be regretted that the debate so far had been conducted along such rigid lines that it seemed inappropriate to raise the question of drafting inconsistencies at all at that stage.

25. A provision such as that contained in paragraph 4 did, in his delegation's view, have some place in the draft convention; however, in view of the wide divergence of opinion on the merits of the existing wording, a mutually accommodating provision would have to be sought either along the lines of the Netherlands amendment or, possibly, along those of article 13 of the 1978 Vienna Convention. In that connection, he noted the Expert Consultant's remark to the effect that the text of article 14 might perhaps be brought into line with that of article 13 of the earlier Convention.

26. If his delegation's reservations on the existing wording of article 14 were not met, it would support the article as drafted by the International Law Commission. However, the value of the text would be greatly diminished if, as seemed likely, there were a resounding negative vote against it. He therefore suggested that, should the Netherlands and United Kingdom amendments fail to be adopted, a final decision on article 14 might be postponed in order to give delegations an opportunity to engage in informal negotiations from which a more acceptable text might emerge. Without wide support, the convention that was being drafted would be of little value to anyone and the hope of elevating the principles it contained to the status of rules in international law would be frustrated.

27. Mr. KOREF (Panama) considered that article 14 should be included in the future convention in the form in which it had been drafted by the International Law Commission, which took account of the need to protect the rights of newly independent States as regards movable and immovable State property situated in the whole of their territory. In the light of recent experience, his country was convinced that such a provision was essential. Referring to the Expert Consultant's explanation that the principle of permanent sovereignty over wealth and natural resources applied not only to newly independent States but also to others, he emphasized that the notion "newly independent" State was open to various interpretations.

28. Mr. OESTERHELT (Federal Republic of Germany) said that, as stated on many previous occasions, his Government's position with regard to the permanent sovereignty of States over their natural resources corresponded to the basic General Assembly resolution on the subject, namely, resolution 1803 (XVII) of 14 December 1962. It regarded the principle as part of international law and held that the rights flowing from it were exercisable only in conformity with that law. Nevertheless, and despite the clarifications supplied by the Expert Consultant, his delegation still entertained doubts as to the juridical nature of the reference to the principle in paragraph 4 of article 14 and its legal consequences.

29. The clear emphasis given to agreement between the parties in articles 13, 16 and 17 and, by implication, in article 15 reflected a pragmatic approach which took full account of existing practice. His delegation would therefore have preferred a similar approach to be adopted in article 14. The reasons given against such a course in the commentary and further expounded by the Expert Consultant were not wholly convincing. Both past and current practice indicated that a succession of States took place predominantly on an agreed basis. States might decide not to accept rules that failed to take account of past practice or to provide a true reflection of existing rules of international law.

30. He favoured the replacement of the phrase "connected with the activity of the predecessor State" by the wording proposed in the United Kingdom amendment. The practical applicability of the International Law Commission's draft was further seriously put in doubt by the vagueness of the provision concerning the passing of property to the successor State in proportion to the contribution of the dependent territory to the "creation" of the property in question. For all those reasons, his delegation would be unable to vote for article 14 as it stood.

31. Mr. HAWAS (Egypt) said that, as he had stated earlier, his delegation would support article 14 as it stood and would oppose the United Kingdom and Netherlands amendments. He welcomed the statement in which—if he had understood it correctly—the United States representative had said that he would not press for the deletion of article 14, but he deprecated that representative's attempts to minimize the value of General Assembly resolutions; Egypt expected those resolutions to be implemented and respected by all. Referring to the Netherlands amendment, he agreed with the point made earlier by the Brazilian representative that it was hardly conceivable that a principle of international law could not be "in accordance with international law". That being so, the purpose of the Netherlands amendment could perhaps be met simply by inserting the words "universally recognized" before or after the words "principle of the permanent sovereignty . . ." in paragraph 4. Referring to the Brazilian representative's suggestion that a text could be worked out in line with article 13 of the 1978 Vienna Convention on Succession of States in Respect of Treaties which could appear in the general provisions of the draft convention, with a special reference to it in article 14 and the other relevant articles, he said he was willing to consider the suggestion with an open mind at the appropriate time.

32. Mr. BEN SOLTANE (Tunisia) thanked the Expert Consultant for his enlightening analysis of the rationale underlying draft article 14. The useful explanations given had effectively dispelled many of his delegation's doubts, and he felt that the Committee as a whole was inclining towards a general acceptance of paragraphs 1, 2 and 3 of the article. He was confident that the remaining difficulty with respect to paragraph 4 could be overcome, given a spirit of mutual understanding and a more pragmatic and less doctrinaire approach than had so far been adopted by some delegations.

33. The addition to paragraph 4 of the words "in accordance with international law" proposed by the Netherlands seemed to imply a conception of the principle of permanent sovereignty of peoples over their natural resources different from the conventional view of the principle as a fixed and immutable rule. It might admittedly be argued that since international law, as the

Expert Consultant had observed, was an entity which evolved with the times, the principle of permanent sovereignty likewise must adapt and adjust to changing realities and to developments in world public opinion. That opinion with regard to the question of the succession of States had for the past 30 years treated the interests of newly independent States as paramount, and thus to fail to make any special provision for their needs would be to ignore reality.

34. He added that it would be regrettable if the Committee became entangled in technicalities. The Conference must not disappoint the hopes placed in it; it must take clear decisions so as to enable it to complete its work successfully.

35. His delegation would support the draft article as it stood.

36. Mr. CONSTANTIN (Romania) said that his delegation also favoured the adoption of draft article 14 unamended because, first, it safeguarded the rights of the peoples of newly independent States in respect of both movable and immovable State property; secondly, it contained a very important and necessary reference to the principle of permanent sovereignty over natural resources, giving States and peoples the freedom to take the measures they deemed appropriate to safeguard that sovereignty; and, lastly, it duly reflected recent General Assembly resolutions on related issues and in particular on the principle of permanent sovereignty. For those reasons, the article could be regarded as a genuine contribution to the development of international law.

37. Mr. MAAS GEESTERANUS (Netherlands) said that he wished to respond to some of the questions raised in connection with his delegation's amendment and to clear up a few misunderstandings.

38. He was grateful to the Expert Consultant for reminding the Committee of the proposal made by the Netherlands almost 40 years before, during the drafting of the Charter of the United Nations, for the inclusion of an article embodying a programme of action for the future organization of economic relations between producer and consumer States. He assured the Expert Consultant of his delegation's full support for the incorporation of such an article in some other convention, if not the one under consideration.

39. He agreed with the representative of the German Democratic Republic that a reference to the principle of permanent sovereignty over natural resources was indispensable, especially in connection with the birth of a newly independent State. It was that consideration which had prompted the Netherlands delegation to endeavour to redraft the pertinent paragraph in a way likely to be generally acceptable to the Conference.

40. The representative of Algeria had expressed surprise at the fact that the concept of natural resources could differ so remarkably from one treaty or legal study to another. He shared that surprise, and it was for that reason that he had raised the point and mentioned a few examples from among the many which might be cited.

41. The representative of Bulgaria had been mistaken in supposing, on the basis of the 1958 Geneva Convention on the Continental Shelf and the 1982 Convention on the Law of the Sea,[4] that the natural resources of the soil and subsoil of the continental shelf would be regarded as falling under the principle of permanent sovereignty. In fact, the 1958 Convention did not employ the term "permanent sovereignty", and the natural resources covered by that instrument were situated outside the territory of the State, where there was no population present by which such sovereignty might be exercised. The Convention on the Law of the Sea spoke only of "sovereign rights", whose scope, again, was confined to the exploration and exploitation of the natural resources of the sea-bed. That issue was quite distinct from that of the natural resources of a populated territory.

42. He had at first been surprised at the reservations expressed by a number of delegations regarding the words "in accordance with international law" in his delegation's amendment. However, if he had correctly interpreted their statements, he gathered that in their view the concept of permanent sovereignty over natural resources was outside international law; that it was not a legal notion in the strict sense but could better be understood as a moral notion. Although sympathizing to some extent with that view, he would still prefer to continue the efforts to couch the principle in legal language.

43. Some delegations had cited paragraph (30) of the commentary in support of their view that the principle of permanent sovereignty over natural resources had acquired the character of *jus cogens*. Actually, that paragraph reflected some internal debate within the Commission and did not reach any conclusion as to whether or not the principle was in fact a peremptory norm of international law. Indeed, since it was in the nature of norms of *jus cogens* that a State could not derogate from it by the conclusion of a conflicting treaty, it seemed clear that, if it had recognized the principle as a peremptory norm, the Commission would not have found it necessary to provide the safeguard embodied in paragraph 4. Thus it was plain that the principle could not be regarded as reflecting a rule of *jus cogens*.

44. The representative of India had drawn attention (13th meeting) to General Assembly resolution 37/103, which requested the United Nations Institute for Training and Research (UNITAR) to carry out the final phase of its analytical study of the principles and norms of international law relating to the new international economic order. His delegation had given that resolution careful study. Indeed, the Netherlands had been among its sponsors. Although General Assembly resolutions as such were not binding on States, resolution 37/103, which had been supported by the overwhelming majority of the Members of the United Nations, reflected the common conviction that it was high time to carry out such a study of all existing or nascent norms of international law, including the principle of permanent sovereignty. Nevertheless, the truth remained that there was nothing in the resolution to indicate that that principle was an established rule of law.

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[4] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII, document A/CONF.62/122.

45. The representative of Thailand had convincingly defended the view that the principle of sovereignty of States over their natural resources was a guarantee that a newborn State would be a freeborn State. His delegation fully recognized the significance of that idea.

46. The representative of Brazil had mentioned article 13 of the 1978 Vienna Convention. Having considered that article again, the Netherlands delegation agreed that reference to it might assist the Committee in resolving its present deadlock.

47. A number of delegations had made other suggestions which might usefully form a basis for compromise, and his delegation would be very glad to assist in any constructive effort to find a solution, either in the Committee or more informally.

48. Mr. FREELAND (United Kingdom) thanked delegations for their comments on his delegation's amendment. He had listened with great interest to all the views expressed but was rather disappointed that no cogent legal arguments had been offered for ways of rectifying the defects which his delegation saw in the Commission's draft articles. Nor had anything stated in the debate altered his delegation's belief that, if the article was to be retained, the solution proposed in his delegation's amendment was the most satisfactory one.

49. Much had been said regarding the relevance of agreement between the States concerned and about whether or not the consensual element of the passing of property should be given prominence in the draft article. It was a cardinal provision of his delegation's amendment that the issues connected with the passing of State property should in the first instance be settled by agreement between the States concerned. It had been suggested that, by its emphasis on agreement, the amendment would disturb the balance established by the Commission in its draft articles as a whole. In fact, in his delegation's view, it was article 14 as it stood which represented a departure from the pattern, for in all other cases of succession enumerated in the draft the concept of agreement was given its due place.

50. The Expert Consultant had stated that the Commission in its approach to the question had never said anything to indicate that there should not be agreement between the States. In the United Kingdom delegation's view, the mere fact that the draft did not prohibit agreement, or, at most, that it merely hinted at the possibility of agreement, as implied in the draft article as it stood, was in no way sufficient to reflect the weight given to agreement in the long history of State practice.

51. It had been suggested that to stress the principle of agreement in the provision in question would not sufficiently take account of the requirements of equity. In the light of his country's experience that was not a valid comment, as the agreements of which it had had knowledge had always been negotiated freely and on an equal footing by both sides.

52. The point had been made that the scope of the United Kingdom's amendment appeared restricted because it focused on State property and did not cover all the categories enumerated in the Commission's draft articles. The reason was simple: his delegation regarded the article as part of a set prefaced by article 1, which defined the scope of the articles as being the effects of a succession of States on "State property, archives and debts", and it should be read in conjunction with article 8, which defined "State property" for the purposes of the Part in which article 14 appeared. That was why his delegation had used the term "State property" to comprise all pertinent property, both movable and immovable. There was nothing in his delegation's amendment which precluded the possibility of the question of the disposition of any other sort of property being dealt with by agreement; it had simply not appeared necessary to state that fact expressly. He saw difficulties inherent in making reference, along the lines of the Commission's article, to other forms of property.

53. His delegation firmly rejected any suggestion that its amendment introduced an element of politicization into the draft articles. The amendment was an attempt to reflect a long history of State practice and to establish a set of rules that would govern the subject simply and in a straightforward manner. Article 14 as it stood would introduce a fresh set of complications into an already difficult process. Since, as the Expert Consultant had underlined, the process of decolonization was almost complete, it was important not to render the remaining steps more difficult or to cast doubt on the practice successfully followed in the past. His delegation's aim was a pragmatic one and it regarded it as the best way of approaching the question.

The meeting rose at 1 p.m.

16th meeting

Friday, 11 March 1983, at 3.05 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 14 (Newly independent State) (*concluded*)

1. The CHAIRMAN invited the Committee to vote on the amendment to paragraph 1 of article 14 submitted by the United Kingdom (A/CONF.117/C.1/L.19).

The amendment was rejected by 41 votes to 19, with 2 abstentions.

2. The CHAIRMAN invited the Committee to vote on the amendment to paragraph 4 of article 14 submitted by the Netherlands (A/CONF.117/C.1/L.18).

The amendment was rejected by 40 votes to 21, with 1 abstention.

3. The CHAIRMAN invited the Committee to vote on draft article 14 as proposed by the International Law Commission.

Draft article 14, as proposed by the International Law Commission, was adopted by 43 votes to 21, and referred to the Drafting Committee.

4. Mr. PIRIS (France) said that his delegation had voted in favour of the amendments submitted by the United Kingdom, and by the Netherlands. Although it felt that those amendments were not altogether perfect and that they could certainly have been improved during the discussion, they were nevertheless acceptable to his delegation, whereas the text of article 14 as currently worded was not. His delegation had therefore voted against the text of article 14 as drafted by the International Law Commission, on the grounds that it was neither legally necessary nor justifiable and that it tried to introduce unacceptable inequities among countries and peoples by means of rules of succession in respect of State property differing from those for other cases of succession. Furthermore, it failed to recognize that succession should be governed first and foremost by agreement between the predecessor and the successor States, which was one of the principal merits of the amendment submitted by the United Kingdom.

5. Again, the wording of paragraphs 1 and 4 was unacceptable, because it did not correspond either to practice or to law. In that connection, his delegation was surprised at the refusal to make any reference to conformity with international law and could not agree with the view expressed in some quarters that because it was not clear what international law was applicable it should not be mentioned. He pointed out, among other examples, that Article 38 of the Statute of the International Court of Justice provided that the Court should decide, "in accordance with international law", such disputes as were submitted to it.

6. His delegation also reiterated its disagreement with the contention that certain decisions or resolutions of the General Assembly of the United Nations could have a binding legal force.

7. In short, the French delegation considered that it might perhaps have been possible to find a compromise wording for article 14, paragraph 4, based on article 1 of the 1966 International Covenant on Economic, Social and Cultural Rights[1] for example. It was in that spirit that the Netherlands amendment had been submitted.

8. In fact, as many speakers had pointed out, article 14 constituted an attempt to establish treaty law; it was not a question of codification. The provisions of article 14 clearly did not correspond either to "absolute, binding rules" which, according to some, existed under international law, or to international custom as evidence of a general practice accepted as constituting law. In any event, such provisions could be considered as binding only on contracting States parties to the convention, which would have to deal in the future with cases of succession of States corresponding to that article.

9. Finally, his delegation felt it was indispensable that the text of article 14 should be further considered in the time remaining before the end of the Conference if there was a common will to produce a generally accepted wording.

10. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation had voted in favour of article 14, as proposed by the International Law Commission, and against the amendments submitted by the United Kingdom and the Netherlands.

11. The adoption of the Commission's draft had convinced his delegation that work on the future convention was proceeding in a realistic and equitable manner. He viewed the explanation of article 14 given by the Expert Consultant as the authorized, indeed even official, interpretation of the text of the article. Nevertheless, he would welcome confirmation of two points: first, that the provisions of article 14, and of paragraph 1, subparagraphs (*c*) and (*f*), in particular, applied not only to States that had been legally and institutionally dependent on another State—the predecessor State—but also to newly independent States that had been controlled by a foreign Power; and, secondly, that because of the overriding nature unanimously assigned to article 14, all agreements on State property concluded between a newly independent State and a foreign Power which had controlled it, by violating the provisions of article 14, were now null and void *ab initio* and did not require prior denunciation by the newly independent State. Thus, article 14 of the draft convention, being later in date and of a specific nature, would,

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[1] General Assembly resolution 2200 (XXI).

in his delegation's view, replace the general provisions contained in the 1969 Vienna Convention on the Law of Treaties.

12. Mr. ECONOMIDES (Greece) said that his delegation had voted against article 14 for the sole reason that paragraph 4 contained no explicit reference to international law.

13. Mr. EDWARDS (United Kingdom) said that his delegation had voted against article 14 as proposed by the International Law Commission. His delegation's position on paragraph 1 of the article had already been made clear and he would restrict his explanation to paragraph 4.

14. It was the aim of the United Kingdom to narrow areas of possible friction between developed and developing countries in regard to natural resources. The debate had reinforced his delegation's impression that paragraph 4 went much in the other direction. His country had, of course, accepted references to the principle of permanent sovereignty in other contexts where it was made clear that that principle involved only rights exercised in accordance with international law. His delegation was particularly concerned about statements attributing law-making force to resolutions of the General Assembly such as the Charter of Economic Rights and Duties of States, which a number of countries could not accept and which some, indeed, had voted against, including his own.

15. Mr. MURAKAMI (Japan) said that his delegation had voted in favour of the United Kingdom amendment to paragraph 1 because it had the virtue of stressing the primary importance of agreements concluded between the parties concerned. It had, however, not been fully satisfied with the other parts of the United Kingdom amendment, on which it reserved its position.

16. His delegation had voted against the draft proposed by the International Law Commission because it had difficulty in accepting paragraphs 1 and 4. Since the article had been approved by the Committee despite the opposition of a number of delegations, he wished to place on record his delegation's understanding that paragraph 4 was not to be interpreted as having the effect of nullifying any agreement concluded contrary to its provisions.

17. Mr. TSHITAMBWE (Zaire) said that his delegation had voted in favour of article 14 as proposed by the International Law Commission because its provisions were fully in accord with the basic concept underlying the Committee's deliberations. Paragraph 4 reflected a principle to which his country fully subscribed.

18. It had been argued that there was no link between resolutions adopted by the General Assembly of the United Nations and the work of the International Law Commission. His delegation did not understand how the Commission could work outside the ambit of the General Assembly, and had found the Expert Consultant's references to relevant General Assembly resolutions both appropriate and helpful.

19. Mr. LEITE (Portugal) said that his delegation had voted against article 14. Had the various paragraphs of that article been voted on separately, it would have abstained on paragraphs 1 to 3 and would have voted against paragraph 4, which it could not accept for legal reasons.

20. Mr. MONNIER (Switzerland) said that article 14, as proposed by the International Law Commission, allowed agreements freely entered into to be automatically nullified on the unilateral determination of the successor State. Such a text was unacceptable to his delegation, which had regretfully been obliged to vote against it. Although the principle of sovereignty over resources was recognized in the law of nations, it was not acceptable in the way presented in the article. The Netherlands amendment to paragraph 4 might have provided a solution to the problem.

21. His delegation did not consider the matter closed and hoped that further efforts would be made to reach a compromise.

22. Mr. OLWAEUS (Sweden) said that, although his delegation accepted the general principles underlying article 14, it had regretfully voted against the draft proposed by the International Law Commission because of the legal problem presented by paragraph 4. If a compromise solution to that problem could be worked out, his delegation would be prepared to reconsider its position.

23. Mr. de VIDTS (Belgium) said that his delegation had voted against article 14 because it was unable to accept paragraph 4 of that article. It accepted the principle of permanent sovereignty, which it believed should be exercised in accordance with international law. He hoped that a solution acceptable to all parties could yet be found.

24. Mr. MARCHAHA (Syrian Arab Republic) said that his delegation had voted in favour of article 14 because that article, which took into account the comparatively weak position of newly independent States, would enable them to exercise their sovereignty in fact and consolidate their rights. It thus translated equality from the realm of theory into practice. The concept of preferential treatment of the weaker party was an accepted feature of many legal systems.

25. Mr. TÜRK (Austria) said that his delegation had voted against article 14 as proposed by the International Law Commission. The amendments submitted by the United Kingdom and the Netherlands would have greatly improved the text and, had they been adopted, his delegation would have been able to vote in favour of the article. The negative vote it had cast should not, however, be construed as a rejection of the concepts that had inspired the inclusion of article 14 in the proposed convention. He was aware of the importance many delegations attached to the article but did not consider its wording appropriate. The absence of a reference to international law in paragraph 4 was particularly unfortunate. He trusted that a way might be found to secure broader agreement on a matter which could influence the position of many delegations on the future convention as a whole.

26. Mr. SHASH (Egypt) said that his delegation had voted in favour of article 14 as proposed by the International Law Commission and against the amendments submitted by the United Kingdom and the Netherlands.

27. The principle of the permanent sovereignty of every people over its wealth and natural resources had

been recognized as a rule of law by the International Law Commission, a body in which all tendencies and legal systems were represented. The recognition of such rules was now a right accorded to all countries, and not, as it had been in the past, to a certain group of countries only.

28. Acceptance of the Netherlands amendment had been urged on the ground that that amendment made an explicit reference to international law. The representative of the Netherlands had, however, denied the existence of the rule of permanent sovereignty of peoples over their wealth and natural resources. It was sufficient to compare the text proposed by the International Law Commission, which provided that an important rule of international law should not be infringed, with the Netherlands amendment, which spoke merely of paying "due regard" to international law, to see that support for the Commission's text did not at all imply disregard for international law.

29. With regard to the question whether agreements which were not in accordance with the principle referred to in paragraph 4 could be void *ab initio*, he drew attention to paragraph (30) of the International Law Commission's commentary on article 14.

30. The argument that peoples had no international personality could easily be countered by reference to the Charter of the United Nations.

31. Mr. KOLOMA (Mozambique) said that his delegation had voted in favour of article 14, as proposed by the International Law Commission, because it took into consideration the dynamic character of international law, the disadvantageous position of a formerly dependent territory in negotiating with a colonial Power and the necessity of safeguarding the principle of the permanent sovereignty of the newly independent State over its wealth and natural resources. Observance of that principle was essential for the full exercise by that State of its sovereign rights. It was for those reasons also that his delegation had voted against the amendments proposed by the Netherlands and the United Kingdom.

32. Mr. SUAREZ de PUGA (Spain) said that, although his delegation considered that the future convention could and should deal with the subject-matter of article 14, it had voted against the text submitted by the International Law Commission. It had observed with regret the lack of flexibility shown by some delegations and the absence of real negotiation on the draft article, which would make it difficult for a convention drawn up in such a way to attain the desired degree of universality. As regards paragraph 4, a reference to international law would probably have been sufficient to enable agreement to be reached. He hoped that the Conference would avail itself of the opportunities still remaining to reach agreement on a generally acceptable formulation for article 14.

33. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had voted in favour of article 14 as proposed by the International Law Commission. Paragraph 4 of that text did justice to the successor State by defining State property in a way which did not infringe that State's permanent sovereignty over its wealth and natural resources. The principle of such sovereignty must be taken into account.

34. Mr. SAINT-MARTIN (Canada) said that his delegation had voted against article 14 as proposed by the International Law Commission. It had hoped that a formulation more in line with international practice would be adopted. With regard to paragraph 4 of the article, his delegation could have accepted a text similar to that of article 13 of the 1978 Vienna Convention on Succession of States in Respect of Treaties or an appropriate reference to international law, as had been proposed in the Netherlands amendment. He endorsed the appeals which had been made for a reasonable compromise on article 14.

35. Mr. AL-NASER MUBARAKI (Kuwait) said that his delegation attached great importance to the principle of the permanent sovereignty of every people over its wealth and natural resources. The amendments which had been proposed by the Netherlands and the United Kingdom were not in conformity with the aspirations of developing countries. The text proposed by the International Law Commission for article 14, and particularly its paragraph 4, was an appropriate formulation which his delegation had supported by its vote.

36. The CHAIRMAN announced that the Committee had concluded its consideration of article 14.

Article 15 (Uniting of States)

37. The CHAIRMAN invited the Committee to consider article 15, as proposed by the International Law Commission, and observed that no amendments to that text had been submitted.

38. Mr. BROWN (Australia) said that, in general, article 15 was acceptable to his delegation. He suggested, however, a small amendment to paragraph 1 where, in the English text, the phrase "and so form a successor State" should be altered to read "and so form one successor State", as in article 31, paragraph 1, of the 1978 Vienna Convention on Succession of States in Respect of Treaties.

39. Mr. LEHMANN (Denmark) said that the text of article 15 was generally acceptable but he wondered whether paragraph 2 was not redundant. There was no similar paragraph in the corresponding article 37 relating to State debts, nor did such a provision appear in article 13 or in article 16, paragraph 2. In order to avoid unjustifiable differences between provisions of a similar nature, he suggested that paragraph 2 of article 15 should be deleted.

40. Mr. MURAKAMI (Japan) observed that paragraph 2 of article 15 dealt with the internal allocation of State property within the successor State itself. That matter fell outside the scope of the convention and the presence of paragraph 2 was therefore inappropriate. Furthermore, the paragraph could be erroneously interpreted as meaning that the internal law of the successor State would prevail over any international agreement governing the allocation of State property. Therefore he suggested the deletion of the paragraph.

41. Mr. SUCHARIPA (Austria) said that his delegation had no major problem with article 15 and could accept paragraph 2. However, he agreed with the view expressed by previous speakers that it might be preferable to delete that paragraph as falling outside the scope of the convention.

42. Mr. SHASH (Egypt) asked that the Expert Consultant should be requested to give his views on paragraph 2 of article 15.

43. Mr. BEDJAOUI (Expert Consultant) said that there was a wide variety of possible unions of States, ranging from a unitary successor State to a confederation. According to the form of union selected, the allocation of State property was decided in full sovereignty by the States uniting, usually within the framework of a prior agreement but also occasionally in accordance with the internal law which the new successor State would have promulgated to regulate all outstanding issues not decided before unification. It was desirable that third States or private individuals should be able to recognize the specific authority to which the property of the predecessor States passed, for example, consulates or embassies which benefited from immunity from the jurisdiction of the States in which they were situated. The opening phrase of paragraph 2 referred to paragraph 1, which stated the rule of international law. Paragraph 2 referred to the right of the successor State to settle the allocation of State property as it wished, even if the predecessor States retained a certain measure of international personality. The exact arrangements under internal law were of course no concern of the proposed convention. He had always been reluctant to have references to the internal law of States in conventions of that kind, but it was sometimes desirable. The corresponding article on State debts had no such paragraph because, for the international community, there was only one successor State which was responsible for the debts of the predecessor States.

44. Mr. ROSENSTOCK (United States of America) said there appeared to be no problems of substance with regard to article 15, only some hesitation as to the necessity of paragraph 2 and concern as to whether it might be misinterpreted as going beyond the scope of the convention. He suggested that the matter should be referred to the Drafting Committee, which might consider the desirability of retention of the paragraph, particularly in view of the absence of such a provision in corresponding articles elsewhere in the proposed convention.

45. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had no difficulty with article 15, paragraph 1. With regard to paragraph 2, he agreed with the Japanese representative that it must not be understood as prejudging any prior agreement between the States concerned about future allocation of State property. He also agreed that once the successor State had entered into existence as a sovereign State the matter of the allocation of State property was no longer a question of international law. His delegation could therefore support the deletion of paragraph 2 but it was not opposed to its retention, on the understanding that it constituted a clarification.

46. Mr. JOMARD (Iraq) agreed with previous speakers who had suggested that paragraph 2 did not fall within the scope of an international convention. It was unnecessary to enunciate that all State property became subject to the internal law of the single successor State recognized by the international community.

47. Mr. MONNIER (Switzerland) said that article 15 was acceptable to his delegation as proposed by the International Law Commission. Paragraph 2 was perhaps redundant, but, in the light of the Expert Consultant's explanation, he thought it preferable to retain the paragraph. Some problem might conceivably arise if the new State had the form of a federation or confederation in which the component units had a certain international personality.

48. Mr. ECONOMIDES (Greece) said that his delegation accepted paragraph 1 of article 15, which stated a rule of international law, but agreed with previous speakers that the clarification in paragraph 2 was not only unnecessary but might in fact prove a source of confusion if the predecessor States had regulated the question of the passing of State property in the basic agreement on unification. Furthermore, since such a provision did not appear in the corresponding article 37, paragraph 2 should also be deleted on grounds of symmetry.

49. Mr. CHO (Republic of Korea) said that his delegation found article 15, as proposed by the International Law Commission, satisfactory. He agreed with the arguments that had been advanced in favour of retention of paragraph 2.

50. Mr. LAMAMRA (Algeria) said that delegations appeared to hold no strong views regarding the deletion or retention of paragraph 2. He therefore proposed that, under rule 47, paragraph 2, of the rules of procedure, the text of the article should be referred to the Drafting Committee with the request that it consider the desirability of retaining or deleting paragraph 2, having regard to the merits of the text itself and the absence or presence of a similar text in the corresponding articles relating to State archives and State debts. The Drafting Committee should be requested to submit its views in the form of a recommendation to the Conference for consideration in plenary meeting. At the same time, the Drafting Committee could consider the drafting amendment to the English text of paragraph 1 which had been proposed by the Australian representative.

51. Mr. DELPECH (Argentina) supported the Algerian representative's proposal.

52. Mr. BOCAR LY (Senegal) also supported that proposal. He suggested that the Drafting Committee should consider also what the situation would be in relation to the internal law of the successor State if the predecessor State agreed that the State property should be allocated on a specific basis by international agreement.

Article 15, as proposed by the International Law Commission, and the oral proposal and suggestions relating thereto were referred to the Drafting Committee.

Article 16 (Separation of part or parts of the territory of a State)

53. Mr. RASUL (Pakistan), introducing the amendment to article 16 submitted by his delegation (A/CONF.117/C.1/L.8), said that the words "connected with the activity" in paragraph 1, subparagraph (*b*), were open to conflicting interpretations and would consequently generate disputes. His delegation was no more satisfied with the explanation provided by the International Law Commission in paragraph (11) of

its commentary to articles 16 and 17 than some members of the Commission itself appeared to have been, in spite of the Commission's final decision that the various alternative formulas put forward by those members in order to free the text from ambiguity were themselves not sufficiently clear. His delegation's proposal that the words "connected with the activity of the predecessor State in respect of" in paragraph 1, subparagraph (*b*), be replaced by the words "situated in" had been made solely in the interest of clarity. In the view of his delegation the words "situated in" were open to the least possible number of interpretations.

54. His delegation also considered that the independent presence of subparagraph (*c*) was unnecessary and would create further complications for States in seeking to determine which property would fall under subparagraph (*b*) and which would fall under subparagraph (*c*). Given the nature of State succession, the existence of the latter subparagraph would inevitably delay the amicable resolution of such problems.

55. Furthermore, subparagraph (*c*) had no basis in customary international law. He had been unable to find any example in the commentary to articles 16 and 17 which supported the principle contained in subparagraph (*c*) of entitlement of the successor State to the property in question. Where, therefore, no basis existed in international law for entitlement of the successor State to certain property, the question of equitable proportions did not arise, since equitable proportion referred to a share, which in turn presupposed the existence of the right to a share. The examples cited by the International Law Commission and referred to in paragraphs (14) and (15) of the commentary to articles 16 and 17 were in no way related to paragraph 1, subparagraph (*c*). For example, the Agreement of 23 March 1906 between Sweden and Norway mentioned in the commentary differed from the subject matter of article 16 in that it related to the dissolution of a State and not to the separation of part or parts of the territory of a State. The matter had also been resolved through an agreement, whereas subparagraph (*c*) related to a situation where there was no agreement. The Agreement cited referred, not to an "equitable proportion", but rather to an entitlement to different properties. Furthermore, the observation contained in the last part of paragraph (15) of the commentary was somewhat arbitrarily based, the Commission having relied upon a solitary but unrelated example, when there were many contrary examples. The formulation adopted by the Commission was therefore not based on a convincing argument and was likely to give rise to disputes. It was for all those reasons that his delegation had proposed the deletion of subparagraph (*c*).

56. Another question which the delegation of Pakistan could not allow to pass without comment was not directly related to the amendments which it had proposed, but concerned paragraph (5) of the commentary to articles 16 and 17, in which the International Law Commission had referred to the separation of Pakistan from India as being a case of secession. His delegation strongly resented that categorization, which had an unfortunate history based on an equally unfortunate legal opinion given by the United Nations Office of Legal Affairs, which had considered Pakistan, at the time of its admission to the United Nations, to be a breakaway State. Many States, including Pakistan, had considered that legal opinion incorrect. Secession, as understood in international law, could refer only to an existing State and not to a colony. In that connection, he drew attention to the fact that the word "State" was used in article 16, paragraph 1, of the proposed article 16.

57. The 1947 Indian Independence Act had created two independent dominions, India and Pakistan. The granting of independence through that Act was itself sufficient evidence to determine the status of British India as a colony. Consequently, Pakistan could in no way be categorized as a breakaway or a secessionist State. For that to be true, either the Indian Independence Act of 1947 would have had to create two dominions out of a colony known as British India, or else British India would have had to be an independent State. In fact, Pakistan had achieved independence one day before India.

58. In conclusion, his delegation requested that a separate vote be taken on each of the amendments it had proposed.

59. Mr. AL-KHASAWNEH (Jordan) said that his delegation considered paragraph 1, subparagraph (*b*), of article 16 vague and capable of improvement. The allocation of immovable State property to the successor State on the basis of the geographical situation of the property was too much in favour of the successor State and was therefore unwarranted, unreasonable and inequitable. Those same reasons had prompted his delegation to vote in favour of the French amendment to article 13 (A/CONF.117/C.1/L.16 and Corr.1) to replace the words "connected with the activities of the successor State" by a reference to a direct and necessary link with the administration and management of the territory concerned. His delegation therefore supported the amendments to article 16 submitted by Pakistan and hoped that a textual change on the lines of the French amendment he had mentioned might be agreed upon.

60. Mr. MONNIER (Switzerland) said that his delegation suggested the deletion of paragraph 2 of article 16 for the reasons it had given during the discussion of the French amendments to article 13 (11th meeting). Article 13 had concerned the transfer of part of the territory of a State to another State, whereas paragraph 1 of article 16 covered a different situation in which part or parts of a territory separated and formed a separate State, as in the case of secession. Two situations were therefore possible under article 16, the first covered by paragraph 1, and the second covered by paragraph 2 in which part of a State separated and united with another State. The latter was precisely the case which his delegation had considered covered by article 13. The International Law Commission had indicated certain differences between the situation covered by article 13 and that covered by paragraph 2 of article 16, and those differences had been referred to in detail in the commentary on article 13 and in summary form in the commentary to article 16.

61. In his delegation's view, the differences mentioned were theoretical and abstract and therefore difficult to judge and determine in concrete terms. The French delegation had already indicated, during the

Committee's discussion of article 13 (*ibid.*), the doubtful nature of the requirement for consultation of the population, and had noted a minor boundary adjustment between France and Italy as an example. Consultation could therefore occur, not on the basis of international law, but on the basis of the internal law of the State or States involved, and particularly of their constitutional law. Political expediency might also dictate a need for consultation. He wondered therefore whether a lack of consultation would constitute a breach of the convention.

62. The Expert Consultant, on the other hand, had quoted, in connection with article 13 (*ibid.*), the case of a transfer of territory between Switzerland and France for the purpose of extension of Cointrin airport. However, there was a whole range of cases between that case and the theoretical case suggested by the International Law Commission of a territory of significant size, with a significant number of inhabitants and of a certain strategic and political importance, in which it would be difficult to decide whether article 13 or article 16, paragraph 2, should apply. Was the distinction to be on the basis of size of territory or number of inhabitants, and how was both the political and the strategic importance of the territory to be quantified? The Swiss delegation therefore saw very great practical difficulties in determining which situations were covered by which article.

63. Furthermore, even supposing that the differences indicated by the Commission were easily recognized, they would not qualify for separate legal provisions. The only criterion would be whether the detached territory constituted a new State or not. Such a distinction was neither justified nor necessary, could cause considerable difficulties in practice and would not contribute to international security, hence the Swiss delegation's suggestion that article 16, paragraph 2, should be deleted. His delegation did not put forward a formal proposal at present but reserved the right to revert to the matter later, depending on the progress made in the discussion of article 16 and the reaction of other delegations to the suggestion.

64. Mr. NATHAN (Israel) said that the observation which his delegation had made in connection with paragraph 2, subparagraph (*b*), of article 13 (*ibid.*) also applied to paragraph 1, subparagraph (*b*), of article 16. The phrase "connected with the activity of the predecessor State" was too vague and required further precision in the sense that the property should be principally connected with the activity of the predecessor State in respect of the territory to which the succession of States related. Similarly, the term "equitable proportion" in subparagraph (*c*) also required further precision and clarification. Flexibility had its advantages where it enabled decisions to be taken in accordance with the specific requirements of a specific situation, but excessive flexibility or inadequate precision in a legal text could lead to confusion and disputes. Suitable criteria were therefore required to govern the process of equitable apportionment of the property involved, such as, *inter alia*, the respective sizes of the territories concerned, the respective numbers of inhabitants and the respective economic resources, taking into account the extent of the property passing to the successor State under paragraph 1, subparagraph (*b*).

65. His delegation was unable to support the amendment of Pakistan because it saw no valid reason why the terms of paragraph 1, subparagraph (*b*) of article 16 should not be identical to the parallel paragraph 2, subparagraph (*b*) of article 13.

66. Mrs. THAKORE (India) said that article 16, as proposed by the International Law Commission, was basically acceptable to her delegation. While paragraph 1, subparagraph (*a*) of article 16 laid down a common rule relating to the passing of immovable State property, subparagraph (*b*) set forth the basic rule relating to movable State property which was applied consistently throughout section 2 of Part II of the draft.

67. The "equitable proportion" or "equitable compensation" rule laid down in paragraph 1, subparagraph (*c*), and paragraph 3 of article 16, which would apply in residual cases as a balancing factor, constituted a practical guideline. The Indian delegation was therefore unable to support the amendments submitted by Pakistan or the amendment suggested orally by the representative of Switzerland.

The meeting rose at 5.55 p.m.

17th meeting

Monday, 14 March 1983, at 10.05 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 16 (Separation of part or parts of the territory of a State) (*continued*)

1. Mr. ECONOMIDES (Greece) noted that article 16 contained as a central concept, which was also to be found in a number of other provisions, that of equity. Both the concept itself and the expressions "equitable proportion" and "equitable compensation" used in the article were very vague and likely to be difficult to apply in practice. It might even be questioned whether they had any legal meaning at all.

2. The International Law Commission was admittedly correct in its introduction to the draft articles in distinguishing equity from a proceeding *ex aequo et bono* (A/CONF.117/4, paras. 82 *et seq.*). When a rule of international law, whether customary or conventional, invoked equity, that concept was applied as a rule of

international law, whereas the principles of *ex aequo et bono* lay outside that law: in the rare instance in which a judge in an international court decided a case *ex aequo et bono*, he effectively became a legislator because he was applying not a general legal principle but a rule which he had subjectively identified as appropriate to determine a given legal relationship. It was for that reason that Article 38, paragraph 2, of the Statute of the International Court of Justice expressly stated that a decision *ex aequo et bono* was admissible only if the parties agreed thereto.

3. Yet even if the concept of equity was a general principle of international law, it was not sufficient in itself. It must always be accompanied by objective criteria capable of precise practical application; that had been the conclusion, for instance, of the International Court of Justice in the North Sea Continental Shelf cases.[1] Article 16 was thus defective and incomplete in that it invoked equity without the support of any such criteria and thus appeared to be based rather on the concept *ex aequo et bono* than on equity as properly understood. It was essential, especially in the context of paragraph 1(*c*), to make provision for such criteria, which should take into account—for the purpose of the apportionment of State property—such elements as the surface area of the territory concerned, the size of the population, its wealth and natural resources and its historical and cultural traditions.

4. His delegation found it difficult to support the first amendment, to paragraph 1(*b*), proposed by Pakistan (A/CONF.117/C.1/L.8), since the change would make the wording of article 16 inconsistent with that of related articles. The second proposal, for the deletion of subparagraph (*c*), was acceptable to the Greek delegation, especially in the absence of any clarification of the term "equitable proportion".

5. Mr. DELPECH (Argentina) said that his delegation endorsed the Commission's draft of articles 16 and 17, which it regarded as a unit in the overall structure of the draft articles. The régime proposed effectively provided for the disposition of immovable State property and of the two distinct categories of movable State property in the cases envisaged, while distinguishing the situation arising out of a separation of part or parts of the territory of a State from that of the dissolution of a State. He fully supported the introduction of the principle of equity in respect of all three cases of succession covered by the draft—State property, archives and debts—understanding that it was being used, in the modern interpretation given to it by the International Court of Justice in the North Sea Continental Shelf cases, as "part of the material content of specific provisions" (A/CONF.117/4, para. 85). He accepted that that formulation of equity strictly had no juridical standing, but felt that that need not deter the Conference from employing it; the United Nations in its codification work had introduced other useful concepts of similar paralegal status which had proved their value in reflecting the concerns of States in international relations, and that process would undoubtedly continue in the future.

6. Mr. PIRIS (France) said that his delegation's views on the most significant aspects of article 16 had been stated earlier in connection with the consideration of analogous provisions in article 13. His delegation was of the opinion that paragraph 2 of article 16 should be deleted; it supported the excellent arguments put forward by the representative of Switzerland at the previous meeting and reminded the Committee of the comments it had made during the discussion on article 13 (12th meeting).

7. Referring to paragraph 1(*b*), he agreed with the representative of Jordan that, in lieu of the extremely vague phrase "connected with the activity of the predecessor State in respect of", the expression "having a direct and necessary link with the administration and management of" should be used. That wording was based on the amendment proposed by France to article 13 (A/CONF.117/C.1/L.16 and Corr.1), which had in turn drawn on a formula cited by the Commission in its commentary (as for example in para. (11) of the commentary to article 12).

8. He would have preferred article 16, paragraph 1 to include a provision, also proposed by his delegation in its amendments to article 13, giving the predecessor State the possibility of retaining certain State property recognized as essential to it for the purpose of maintaining or establishing certain services, with the agreement of the successor State, in the separating territory, or at least stipulating that the passing of such property should be determined in accordance with the respective needs of the two States concerned.

9. While he appreciated the Pakistan delegation's motive in proposing its amendment to paragraph 1(*b*), the wording of which as it stood was far too imprecise, he could not fully support the use of the words "situated in", which might, according to circumstances, be construed either very narrowly or very broadly. It would hardly be just in the case, for instance, of a highly specialized and important national scientific installation, owned by the predecessor State and situated in the separating territory, that the whole of the State property relating to it should pass to the successor State. The amendment by Pakistan should therefore be modified as proposed by the representative of Jordan (16th meeting).

10. He supported Pakistan's second proposal, that paragraph 1(*c*) should be deleted. The result would be greater uniformity in the solutions provided in the different cases of succession and especially those treated in articles 13 and 16, where the distinction was not clear-cut.

11. Mr. ZSCHIEDRICH (German Democratic Republic) said that, in his delegation's view, article 16 as proposed by the International Law Commission was well balanced and the distinction between article 13 and paragraph 2 of article 16 clearly drawn.

12. The key point of article 13 was that a transfer of part or parts of the territory of a State in no way in-

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[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3.

volved the right of self-determination of a given people, since, under the terms of article 13, only a very small part of the territory and a very few inhabitants were affected. That those inhabitants should be consulted was dictated not by the principle of self-determination but by the internal law of the predecessor State or possibly by a treaty between the two States concerned. The inhabitants were entitled under that fair and democratic procedure, first, to choose which citizenship they would adopt and, secondly, to have their say in the settlement of questions regarding their private property.

13. Certain delegations, including that of France, had made the point that paragraph 2 of article 16 covered a purely abstract, hypothetical case. It was possibly true that no such case had yet occurred. However, bearing in mind the fact that the Conference was drafting a convention for the future, it was legitimate and necessary to cover all theoretically possible cases of succession.

14. His delegation endorsed the provisions of article 16 on the division of State property. Although it had some reservations about the Commission's formulation, it was convinced that it would not be possible to find any definition of the situation which would take full account of all the specific circumstances of every case of State succession. The Commission had done the most which could be expected: it had worked out a general law applicable to most circumstances.

15. In connection with the principle of equity and the expressions "equitable proportion" and "equitable compensation", he said that some or all of the following elements should be taken into account in the apportionment of State property in the case covered by the article: the size of the territory; the size of the population; the contribution of the population of the territory to the creation of the immovable and movable State property situated inside and outside the territory; the national income or gross national product of that territory; the benefits actually accruing to the successor State and its population; and the need for a secure foundation for the existence of the predecessor and successor States. Such criteria might form guidelines for an agreement between the two States as well as general principles to be applied in the absence of such an agreement.

16. The amendment proposed by Pakistan to paragraph 1(*b*) of article 16 did not accord with the overall aim of article 16. It did not provide for the possibility of certain movable property being located outside the territory concerned, possibly in a third State. His delegation was thus in favour of the wording of the subparagraph proposed by the Commission.

17. The same comment applied to the proposed deletion of subparagraph (*c*). The subparagraph was a saving clause and hence should not be deleted.

18. Mr. TEPAVITCHAROV (Bulgaria) noted that article 16 dealt with two distinct and very important cases of succession in respect of State property: the case of the separation of part or parts of a territory of a State and the formation of a new State; and the case where part of a State's territory separated from that State and united with another State. His delegation considered those two cases as two options open to the territory separating from a given State, where its future was determined by the will of the people of the territory.

19. The text proposed by the International Law Commission was a necessary element of the draft and consistent with a well-balanced classification of the categories of State succession. The criterion applied throughout the Part in which article 16 appeared for determining the kinds of State property which were affected by succession was the distinction between immovable and movable property, justified both by the intrinsic nature of those kinds of property and by the long history of State practice, further criteria rightly being introduced for determining which of the movable property in question could be claimed by the successor State: the viability of the territory; the general principle of equity; and a connection with the activity of the predecessor State in the territory affected by the succession. He concurred in the Commission's view that to make geographical location the sole determining factor in the treatment of movable State property would be unfair; the specific circumstances under consideration were not sufficiently different from other cases to justify any major deviation in approach.

20. Of particular interest to his delegation was the provision in paragraph 2 of article 16. There were several clear ways in which succession under article 13 differed from that covered by article 16. Article 13 provided for the transfer of a territory by a State, no other option being open to the transferred territory, whereas article 16, paragraph 2, provided for separation as a second option available to the population inhabiting the territory, the first being the formation of a separate State. Furthermore, in the process of the separation of territory, the determining factor was the will of the resident population, while under article 13 the inhabitants of the territory had no choice. In addition, in the case covered by paragraph 2 of article 16, agreement between the predecessor State and the successor State was not in itself sufficient to trigger the automatic operation of the provisions of article 9, for the consent of a third party, the population of a territory, must be obtained. Lastly, the consent of the people of the territory not only determined the nature of the territory's statehood after separation but also affected the type of movable property which would be subject to succession and provided for a second category of movable State property other than that connected with the activity of the predecessor State in respect of the territory. In his delegation's view, the contribution made thereto by the people of the territory must be accepted as the legal basis for any claim to an equitable proportion of that second category of movable property, as provided for in paragraph 1(*c*).

21. His delegation understood paragraph 3 of article 16 as meaning that, if a question regarding equitable compensation arising between the predecessor State and the successor State were not settled by specific agreement, then a settlement under paragraphs 1 and 2 of the article would not preclude a claim to certain State property on the grounds that the clauses of the agreement did not provide expressly for such a course of action. Paragraph 3 of article 16 itself was the basis for such a claim.

22. For all those reasons, his delegation supported the draft article without modification.

23. Mr. OESTERHELT (Federal Republic of Germany) noted that the salient feature of article 16 was the difference in the treatment of the movable property of the predecessor State by contrast with article 13. Under the latter, movable property passed only to the extent that it was connected with the activity of the predecessor State in respect of the territory, while under the terms of article 16 the passing to the successor State of a second category of movable property, namely an equitable proportion of all the rest of the movable property of the predecessor State, was provided for.

24. Although there were a number of good reasons why cases of separation of part of a State's territory should not be treated differently from cases of transfer of territory, he did not wish to reopen the debate on that issue. If such special treatment were to be accorded, however, it should be done in the most effective manner possible, and it was in that respect that his delegation had some doubts as to the appropriateness of the draft article.

25. On the premise that, in the final analysis, the reason for treating secession differently lay in the specific characteristics of the situation, it might be questioned whether it was really reasonable to assume that two States which had so recently separated, frequently against the will of one party, would come to terms on the question which of the movable property of the predecessor State was "connected" with its activity in respect of the separating part, quite apart from the question which portion of the rest of the movable property represented "an equitable proportion". The property claimed by the successor State might, after all, be situated in the surviving predecessor State or in a third State, a situation likely to lead to protracted disputes.

26. For that reason his delegation had serious doubts about the practical applicability of the formula "connected with the activity of the predecessor State in respect of the territory", even in relatively clear cases, and about the expression "equitable proportion". Thus the amendment proposed by Pakistan that paragraph 1(*c*) should be deleted seemed sensible.

27. The amendment proposed by Pakistan for paragraph 1(*b*) also had its merits. However, if the Committee adopted the implied "territorial approach", in preference to the "functional approach" of the Commission's text, then the amended article could be simplified still further. Paragraph 1 might simply read: "When part or parts of the territory of a State separate from that State to form a State, and unless the predecessor State and the successor otherwise agree, State property situated in the territory to which the succession of States relates shall pass to the successor State", no distinction being made between movable and immovable property. Nevertheless, as the representative of France had pointed out, such a rule would go in part too far and in part not far enough.

28. Mr. FAYAD (Syrian Arab Republic) said that in his delegation's opinion article 16 as drafted by the International Law Commission dealt effectively with the transfer of property in situations which arose upon the separation of part or parts of a State's territory. The deletion of paragraph 1(*c*) would deprive the text of the reference to equity, a concept which, though perhaps vague, was fundamental to the article as a whole.

29. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) considered that the International Law Commission's draft of article 16 should be approved as it stood, for it gave a clear definition of the consequences of succession of States in the event of the separation of part or parts of a State's territory. Paragraph 1 was important in that it accorded priority to the agreement between the predecessor and successor States.

30. His delegation could not support the proposal by Pakistan for deleting paragraph 1(*c*) since it could not see why an equitable proportion of the movable property of the predecessor State should not be transferred to the successor State. Paragraph 1(*b*) covered only a part, possibly an insignificant part, of the movable property of the predecessor State. To delete paragraph 1(*c*) would be to deprive the new State of the financial resources it needed to survive.

31. Nor could his delegation agree with the criterion of location used in the amendment proposed by Pakistan. The essential feature of movable property, which consisted primarily of such elements as funds in cash, deposits in domestic and foreign banks, foreign currency, debt claims and gold reserves, was its territorial mobility. The successor State should receive the specified portion of the movable State property wherever that property might be situated, including property situated in territory within the jurisdiction of third States.

32. Mr. ASSI (Lebanon) said that his delegation supported the International Law Commission's draft of article 16, but agreed with the representative of Pakistan that paragraph 1(*c*) might be deleted.

33. The amended version of paragraph 1(*b*) was inequitable in that it would deprive the separated territory of virtually all movable property which was connected with its activity but which was situated in territory which remained part of the predecessor State. Paragraph 1(*b*) should cover all movable property and should exclude any possibility of ambiguity or subsequent interpretation.

34. In the case of paragraph 1(*c*), however, his delegation believed that the International Law Commission's text was either too vague or too restrictive and that it might be open to differing interpretations.

35. Mr. BEDJAOUI (Expert Consultant) said that article 16, like other subsequent articles, was based on the principle of equity in international law. The International Law Commission's object had been to arrive at wording which would be both compatible with that principle and applicable to the great diversity of cases of State succession. However, the affirmation of principle must be backed up by objective criteria which would provide guidance to an international judge or to the States involved in a succession. At the same time, the Commission had been aware of the difficulty involved in determining when a specific criterion, such as the size of the territory and its population, or its political, economic and strategic importance, should be invoked, and had accordingly adhered to the concept of "equitable compensation". It might prove difficult to

improve on that approach, but the Drafting Committee might be asked to give the matter its consideration.

36. Referring to the proposal by the representative of France that paragraph 2 of article 16 should be deleted, he said that the International Law Commission had felt it necessary to draw a distinction between "transfer" of territory as used in article 13 and "separation" in paragraph 2 of article 16. The crucial question was whether, in a particular case of succession, transfer or separation was involved; but it was only political reality that told us whether we were witnessing a secession (article 16) or a transfer (article 13), and the Commission had concluded that the two categories should be differentiated, and had drafted paragraph 2 accordingly.

37. The amendment proposed by Pakistan to paragraph 1(*b*) would, he thought, prove difficult to put into practice. The concept of "movable State property" would not be a reliable criterion in that the extent of the property concerned would still be open to dispute, while the possibility would remain that property could be moved by the predecessor State prior to the succession. In the case of railway property, for example, the effect of the amendment proposed by Pakistan would be that such property would have to be physically situated in the territory to which the succession of States related in order to pass to the successor State. Paragraph 1(*b*) was designed to avoid such a strict condition.

38. Commenting on the proposal for deleting paragraph 1(*c*), he thought that it was essential to include a provision which would ensure the viability of the successor State after separation. In that context, the reference to "equitable proportion" was both indispensable and sufficiently flexible.

39. Mr. AL-KHASAWNEH (Jordan) said that he did not see any contradiction between the text proposed by the representative of Pakistan for subparagraph (*b*) and the overall aim of the article as drafted by the International Law Commission. The objection to the amendment seemed to posit bad faith on the part both of the predecessor and of the successor State, an assumption which did not seem to his delegation a sound basis for drafting an international convention. However, to avoid any ambiguity the amendment might be reworded to refer to "movable State property situated before the date of succession in the territory to which the succession of States relates . . .".

40. In general, his delegation felt that, while the era of decolonization might be drawing to a close, there was every reason to suppose that article 16 would prove to be of great importance in a world in which fragmentation of States was a continuing and by no means uncommon occurrence.

41. Mr. MONNIER (Switzerland) noted that the Expert Consultant appeared to concur with his own view as to the difficulty of measuring or quantifying the criteria on which the distinction between the case envisaged in article 16, paragraph 2, and that envisaged in article 13 was founded. In order to justify that distinction, the Expert Consultant had seemed to depart from the criteria listed in paragraph (16) of the commentary—the size of the territory and of its population and its political, economic and strategic importance—and to have concentrated on two cases very obviously different from one another, that of an agreed transfer of part of the territory of a State, for example, the often-quoted extension of the Geneva-Cointrin airport into what was formerly French territory, and that of a situation implying a political break between the predecessor and successor States. Most situations occurring in real life, however, fell between those two extremes, and hence to determine whether article 13 or article 16, paragraph 2, should apply would, in practice, be rather more difficult than the Expert Consultant had implied. He therefore continued to feel that the distinction should not be maintained and that paragraph 2 of article 16 should be deleted. However, as already stated, he was not submitting a formal amendment to that effect and would not insist upon a vote on his suggestion.

42. Mr. RASUL (Pakistan), replying to the comments made on his delegation's amendments, said that he failed to see any direct link between the cases envisaged in articles 16 and 14, respectively. According to the definition of a "newly independent State" in article 2, such a State was, in effect, a former colony; yet even a newly independent State, thus defined, might well be a predecessor State in the situation envisaged in article 16. His delegation's motive in submitting the amendment was rooted in the belief that an important legal instrument such as that under consideration should provide guidelines for the solution of problems rather than create situations that could give rise to controversy. The existing text of article 16, paragraph 1(*b*), was considered highly ambiguous by many delegations and that was why he wanted to see it amended. However, since it appeared to be generally felt that his delegation's amendment to paragraph 1(*b*) was too restrictive as it stood, he suggested that some such phrase as "having a direct and necessary link" should be added.

43. With regard to his delegation's proposal for the deletion of paragraph 1(*c*), he said that he found it surprising that the International Law Commission should have concerned itself with only one side to the situation and ignored the other. In many cases, a seceding State, far from being weaker or poorer than its predecessor, was in fact richer and more developed: that, indeed, was often the reason for the secession. The question of economic viability or survival for the predecessor State was then extremely acute. He maintained the amendment to paragraph 1(*c*) and requested that it should be put to a vote.

44. While having no strong feelings as to whether paragraph 2 should be maintained or deleted, he suggested that, if the clause was retained, the word "also" might be inserted between the words "Paragraph 1" and "applies". In conclusion, he associated himself with the remarks just made by the representative of Jordan, and reserved the right to comment on the principle of equitable proportion when introducing his delegation's amendment to article 35 (A/CONF.117/C.1/L.13).

45. Mr. KADIRI (Morocco) said that he was fully satisfied with the explanations given by the Expert

Consultant and supported article 16 as it stood. He opposed the amendment by Pakistan to paragraph 1(*b*) because the phrase "situated in the territory to which the succession of States relates" was normally associated with immovable State property only; he was strongly in favour of maintaining paragraph 1(*c*) because the principle of equitable compensation was a keystone of the whole edifice of the convention.

46. The CHAIRMAN suggested that the Committee should vote on the amendment by Pakistan to paragraph 1(*b*) of article 16 as orally amended by the representative of Pakistan.

47. Mrs. BOKOR-SZEGÖ (Hungary) considered that the revised amendment should be submitted in writing.

48. Mr. TSYBUKOV (Union of Soviet Socialist Republics) referred to rule 28 of the rules of procedure, according to which, as a general rule, no proposal was to be discussed or put to the vote unless copies of it had been circulated to all delegations not later than the day preceding the meeting. To vote on an amendment which had only just been moved in oral form would create a precedent which might complicate the subsequent course of the Conference.

49. Mr. do NASCIMENTO e SILVA (Brazil), while agreeing that the amendment should not be voted upon until it had been circulated in writing, doubted whether it was in order to submit a text which had already been rejected in connection with another article. When the Committee had adopted the Egyptian amendment to article 11 (A/CONF.117/C.1/L.6), it had agreed that the same text should be inserted where appropriate throughout the text of the convention. In his view, the same principle should apply, *contrario sensu*, to the French delegation's amendment to article 8 (A/CONF.117/C.1/L.5).

50. Mr. A. BIN DAAR (United Arab Emirates) agreed with the Soviet representative that consideration of the amendment by Pakistan in its revised form should be deferred pending its circulation in writing.

51. Mr. OESTERHELT (Federal Republic of Germany), replying to the point just raised by the representative of Brazil, said that in his view it was perfectly in order to discuss a formula which had been rejected in the context of another article.

52. Mr. JOMARD (Iraq) concurred.

53. The CHAIRMAN suggested that the vote on both the amendments by Pakistan to article 16 should be deferred and requested the representative of Pakistan to submit the text of his revised amendment to paragraph 1(*b*) in writing.[2]

Article 17 (Dissolution of a State)

54. Mr. MARCHAHA (Syrian Arab Republic) said that his delegation could support article 17 in the form in which it stood. He suggested a minor change in the order, so that existing subparagraph (*c*) would come between subparagraphs (*a*) and (*b*).

55. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation could support article 17 as it stood, although he wished to comment on the drafting of paragraph 1. Bearing in mind article 8, which defined "State property", and that State property was governed by the internal law of the predecessor State, it might be considered that the words "State property of the predecessor State" contained a superfluous element, while on the other hand, in general, no immovable State property could exist outside the territory of the predecessor State. He therefore suggested the deletion of the word "State" in the phrase "immovable State property" in paragraph 1(*b*) and "of the predecessor State" in the phrase "State property of the predecessor State" in subparagraphs (*a*), (*c*) and (*d*). His delegation supported paragraph 2, albeit with some hesitation, for the exact meaning of "equitable" was not clear. He suggested that the draft convention might be supplemented by an article to cover the settlement of disputes concerning the interpretation of such words.

56. Mr. ECONOMIDES (Greece), referring to his delegation's comments concerning the word "equitable" in article 16, said that those comments were also applicable in the case of article 17, paragraphs 1(*b*), 1(*d*) and 2. In his delegation's opinion the concept should be made more explicit by means of objective criteria. He supported the suggestion by the Netherlands delegation that it might be useful to establish machinery for settlement of disputes.

57. Mr. RASUL (Pakistan) said that his delegation could accept article 17 as it stood. However, it reserved the right to comment on the terminology, in particular on the use of the word "equitable", when introducing its proposed amendment to article 39 (A/CONF.117/C.1/L.15).

58. Mr. AL-KHASAWNEH (Jordan) said that, although his delegation had expressed doubts concerning the words "activity of the predecessor State" in articles 13 and 16, it none the less found the formula somewhat more acceptable in paragraph 1(*c*) of article 17, since in the case of the dissolution of a State the criteria to be applied were less strict.

59. Mr. IRA PLANA (Philippines) said that, on the whole, the provisions of article 17 were adequate and his delegation could accept the article although it might require some minor drafting changes which could be left to the Drafting Committee.

60. Mr. BEDJAOUI (Expert Consultant) said that there might be some danger in deleting the word "State" from paragraph 1(*b*), as suggested by the Netherlands delegation. The draft convention dealt throughout with State property, State archives and State debts and it might therefore be preferable to retain the word "State", even at the risk of being repetitious, in order to avoid confusion and make it clear that the property referred to was property in the public and not in the private sector. It might also be preferable to retain the words "of the predecessor State" in subparagraphs (*a*), (*c*) and (*d*), again in order to avoid confusion, since otherwise there might be cases where, for example, the article might be taken to cover property belonging to a third State and located in the territory of the successor State. Consideration of machinery on the settlement of disputes could only be beneficial.

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[2] Subsequently issued under the symbol A/CONF.117/C.1/L.8/Rev.1.

61. After a discussion on procedure in which Mr. ROSENSTOCK (United States of America), Mr. DELPECH (Argentina) and Mr. LAMAMRA (Algeria) took part, the CHAIRMAN said that he would take it, in the absence of objection, that the Committee of the Whole wished to adopt article 17 as proposed by the International Law Commission without a vote and refer it to the Drafting Committee.

It was so decided.

The meeting rose at 1 p.m.

18th meeting

Monday, 14 March 1983, at 3.10 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 18 (Scope of the articles in the present Part)

1. Mr. ECONOMIDES (Greece) said he believed the feeling in the Committee was that article 18 should be considered in conjunction with similar articles appearing elsewhere in the draft convention. His delegation had already requested that such identical provisions be considered together in greater depth, in line with an earlier suggestion by the Algerian delegation. He wished finally to propose that a working group be established to review all provisions that were of a similar nature and to make recommendations to the Committee of the Whole regarding the placing of those provisions in the draft convention.

2. Mr. NAHLIK (Poland), supporting that proposal, said that the working group should comprise representatives from all groups of countries.

3. Mr. PIRIS (France) said that his delegation had no objection to the Greek representative's proposal. He wished only to remind the Committee that it had decided to defer its consideration of article 7 pending its consideration of article 1. Furthermore, since the scope of the articles in Part III depended on the definitions in Part I, the Committee should take the same course of action in respect of article 18 as it had already done in respect of article 7.

4. Ms. BOKOR-SZEGÖ (Hungary) questioned the need to establish a working group; she could not see what its mandate might be.

5. The CHAIRMAN proposed, in the light of the statements made, that the Committee should defer its consideration of article 18 until it took up articles 1 to 6.

It was so decided.

6. The CHAIRMAN further proposed that the proposal of the representative of Greece that a working group be established should be considered after informal discussions had taken place between delegations and between the Chairman and the various regional groups concerning the mandate for the working group.

It was so decided.

Article 19 (State archives)

7. Mr. EDWARDS (United Kingdom), introducing his delegation's amendment (A/CONF.117/C.1/L.20), said that the definition of "State archives" in article 19, as proposed by the International Law Commission, was circular. In effect, it said that State archives meant documents kept by a State as archives. The definition contained three crucial elements: that archives encompassed all documents of whatever kind, including engravings, drawings, plans, etc.; that they had belonged to the predecessor State according to its internal law; and that they had been kept by the predecessor State as its archives. It was worth noting that the last element was not qualified by the words "according to its internal law". His delegation had carefully considered the points made in the second part of paragraph (1) of the International Law Commission's commentary on the article but did not agree that there were practical difficulties because such protection as was needed by States was already well accepted in international practice and related to such matters as State security or the proper protection of the privacy of private individuals. His delegation believed that the practice of States in the keeping of documents needed to be qualified by the term "according to its internal law". His delegation's proposal provided a much clearer definition. In commending its amendment to the Committee, his delegation reserved the right to comment at a later stage on the Kenyan delegation's proposal (A/CONF.117/C.1/L.27) and on the question generally.

8. Mr. MUCHUI (Kenya), introducing his delegation's amendment (A/CONF.117/C.1/L.27), said that, as drafted by the International Law Commission, article 19 was neither satisfactory nor convincing. He could only assume that the Commission had wished to include in the definition all the documents relating to a territory which had been used for administrative purposes, whether they were active, dormant or placed in a repository. Unfortunately, however, the text of the definition covered only documents kept as archives. His delegation believed that the definition should also include documents still in registries or attics awaiting attention, since it was well known that the United Kingdom, for example, regarded as archives only documents that were 30 years old, which excluded those still kept in registries. The United Kingdom amendment did not, in his view, deal convincingly with the question. His delegation had therefore proposed the deletion of

the words "and had been kept by it as archives". The determination of what were archives would then be made according to the internal law of the predecessor State, which included all the rules and regulations that might formerly have existed in a particular territory.

9. Mrs. THAKORE (India) drew attention to the difficulties of defining the term "archives" which had been referred to by the Special Rapporteur in his eleventh report to the International Law Commission.[1] The Special Rapporteur had suggested that the range of items transferable in the event of a succession of States should be taken in the broadest sense, unless the predecessor and successor States had expressly agreed otherwise. Such items should include "archives and documents of every kind". The Special Rapporteur had further pointed out that the successor State was bound by the meaning attached by the predecessor State to the term "State archives" in conformity with its own legislation in force at the time of the succession of States, if the treaty governing the devolution of archives concerning the territory transferred had not defined the nature of those archives differently. The domestic law in force in the predecessor State, therefore, indicated what was meant by State archives, namely written, sound and photographic or graphic material. Objects of all kinds accompanying those documents were archives by reason of their purpose.

10. In the light of those comments, the Indian delegation considered the definition of State archives in article 19 to be of extreme importance, since it determined the entire structure of the articles which followed. According to that definition, two conditions had to be fulfilled. First, the documents must have belonged to the predecessor State according to its internal law and, second, they must have been kept by the predecessor State as archives. An essential feature of the definition was the broad reference to "documents of whatever kind", which precluded the possibility of restrictive interpretation. The position of works of art depended on the definition of State archives given in each system of internal law. Where works of art were not treated as State archives, they were not excluded from succession since they came under the heading of State property.

11. The Commission had wisely decided against enumeration in article 19 of the various kinds of documents covered by the definition, since such enumeration could not be complete. It had also rightly decided not to use the words "collection of" before "documents of whatever kind", in order that individual documents which were not interconnected should not be excluded from the succession. Furthermore, since State archives—excluding custodial institutions and premises—were undoubtedly movable State property, the Commission had placed the articles on State archives immediately after those on State property to establish a link between State archives and State property. Finally, like article 8 on State property, article 19 defined State archives by reference to the internal law of the predecessor State so as to maintain a similarity between the two articles.

12. Since a predecessor State could exclude the bulk of public papers of recent origin from a succession by virtue of their not being designated under its internal law as State archives, the Commission had detached the reference to the internal law of the predecessor State from the documents kept by it as archives. That also ensured a parallelism between the definition of State archives and that of State property. The Indian delegation considered the definition proposed by the International Law Commission acceptable in principle, but would like the Expert Consultant to indicate whether the words "and international law" might usefully be added as a safeguard after the words "internal law".

13. The United Kingdom amendment appeared to be of a drafting nature and could perhaps be dealt with by the Drafting Committee. She believed that the concern expressed by the representative of Kenya was met by the existing text of article 19.

14. Mr. ENAYAT (Islamic Republic of Iran) said that the second element in the definition of archives, "had been kept by it as archives", was both superfluous and unnecessary. On the one hand, it conflicted with what he believed the International Law Commission had intended and, on the other, it was unnecessary even as part of a definition. The Commission had wished to make only the first element in the definition subject to the internal law of the predecessor State. However, the second element was also determined by the internal law of the predecessor State since the condition of being kept by a State as archives was in itself sufficient proof of the qualification as archives. If the predecessor State's recognition of documents as archives was a necessary qualification, so then was the application of its internal law. Paragraphs (2) and (3) of the International Law Commission's commentary mentioned two definitions of the concept of archives under which the element "and had been kept by it as archives" was subject to application of the internal law of the predecessor State, which the Commission had not wanted. The Commission had also made it clear in paragraph (4), particularly in its reference to sound documents and cinematographic films, considered in some countries to be an integral part of State archives, that application of the predecessor State's internal law had in the past enabled States to exclude the bulk of public papers from succession. International practice therefore tended to define archives in the same manner as in the Agreement of 23 December 1950 between Italy and Yugoslavia and the other instruments referred to in paragraph (7) of the International Law Commission's commentary.

15. Analysis of the terms used in article 19 revealed that the phrase "kept by it as archives" contributed nothing. The phrase in fact contained three elements, all of which were embodied in the expression "archives". There could be many documents which the predecessor State did not "keep" and which were therefore not archives, but they would qualify as "movable State property". With regard to the element "by it", which referred to the predecessor State, any case in which a document had been kept by a third party either temporarily or permanently should be resolved under the provisions of article 26, paragraph 4. That element

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[1] *Yearbook of the International Law Commission 1979*, vol. II (United Nations publication, Sales No. E.80.V.5 (Part I)), document A/CN.4/322 and Add.1 and 2.

was therefore unnecessary. The third element, "as archives", involved the internal law of the predecessor State, which was to be avoided. The Iranian delegation therefore supported the Kenyan amendment calling for the deletion of the last phrase of article 19.

16. Ms. LUHULIMA (Indonesia) observed that, as the International Law Commission had pointed out in its commentary on article 19, the term "archives" did not, in a number of countries, include both historic and recent documents. The Indonesian delegation felt that Kenya's amendment improved the text of the article, but it would like to see included in the definition current records, which were essential for maintenance of administrative continuity in a territory, avoidance of disruption and facilitation of proper administration. The United Kingdom amendment was essentially a drafting matter and could therefore be dealt with by the Drafting Committee.

17. Mr. BARRERO-STAHL (Mexico) said that his delegation was concerned at the dangers implicit in the universe implied by the use in article 19 of the phrase "all documents of whatever kind". It was conscious, however, of the greater dangers of producing a restrictive effect by substituting a detailed definition listing every item which might constitute archives. Some essential item might be omitted from the list. His delegation was also concerned about the passing to a successor State of *objets d'art*, referred to by the International Law Commission in paragraph (6) of its commentary on the article. Furthermore, there was no absolute distinction between "archives" and "libraries" or between "archives" and "museums", a distinction which, in his delegation's view, would extend to the property included under those classifications whether as archives or as *objets d'art*.

18. His delegation was concerned that a nation's heritage might be impoverished by the disposal of *objets d'art* whose passing could not be regulated by the simple requirements of the normal administration of the territory transferred. The Mexico City Declaration on Cultural Policies contained in the Final Report of the World Conference on Cultural Policies organized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1982 had stated that the cultural heritage of a people included works of art, archives and libraries.

19. He therefore asked the Expert Consultant to clarify the question of the passing of, or the obligation to return, as the case might be, State archives which had the character of *objets d'art*. Nations had the right to keep and to recover their cultural and historic heritage together with the territory concerned in a succession of States.

20. Mr. SHASH (Egypt) said that the International Law Commission's commentary on article 19 clearly demonstrated the difficulty of defining the term "archives". While the criterion of the internal law of the predecessor State had been readily acceptable in respect of State property, its use in respect of State archives could create problems. Although it was normally undesirable to cite examples in a definition, it might be necessary, in order to safeguard the interests of successor States, to offer in the present case examples of specific types of documents that should be considered archives. The Kenyan amendment was a successful effort to improve the text, but further elaboration of the article was none the less required.

21. Mr. KOLOMA (Mozambique) said that, despite the efforts of the International Law Commission, article 19 offered only subjective criteria for the definition of State archives, since it defined them as documents which had been kept by the predecessor State as archives. What would happen, for example, in a case where certain documents were considered archives by the successor State, but not by the predecessor State?

22. In his delegation's view, the Committee could solve the problem in one of two ways: either by developing objective criteria for the determining of what were archives, or by accepting the Kenyan amendment.

23. Mr. NATHAN (Israel), stressing the importance of article 19 for the structure of Part III as a whole, said that the text proposed by the International Law Commission raised a number of problems. One was that the definition of State archives as "documents of whatever kind . . ." did not seem broad enough to cover all the items enumerated in paragraph (5) of the Commission's commentary on the article. It might be preferable to refer to "documents of whatever subject matter, nature or material". A second problem, already mentioned, was that the definition offered in the last phrase of the article was a circular one. The amendment submitted by the United Kingdom, which apparently sought to overcome that problem by identifying State archives according to the internal law of the predecessor State, presented problems of its own. In some countries, up to 10 years could elapse before documents kept by government offices were officially designated as "archives". A reference instead to documents that had been kept by the predecessor State for record purposes might overcome the problem of the circularity of the definition, while at the same time safeguarding the security and internal interests of the predecessor State.

24. Mrs. TYCHUS-LAWSON (Nigeria) said that, before a satisfactory definition of "State archives" could be found, it would be necessary first to define the meaning of "archives". Unless a definition acceptable to both predecessor and successor States could be found, the Kenyan amendment to article 19 should be adopted.

25. His delegation would welcome some explanation of the effects of the passing of State property on works of art, which, according to the International Law Commission's commentary, were not covered by the definition of archives.

26. Mr. MASUD (Observer for the Asian-African Legal Consultative Committee) said that, while the first criterion offered by the Commission for the definition of State archives could be easily accepted, the second condition—that they must have been kept by the predecessor State as archives—raised a number of problems. Apart from the fact that in certain cases the predecessor State might have reason not to classify documents as archives, the categorization of documents as archives varied widely from country to country.

27. On the other hand, the deletion of the final phrase of article 19, as proposed by Kenya, would make the definition too broad.

28. Some objective and precise criteria should be developed, to ensure that documents, records and the like that were used for official purposes were included in the definition. One possibility would be to refer to documents which, according to State practice, were normally kept as archives.

29. Mr. OESTERHELT (Federal Republic of Germany) agreed that the definition given in article 19 was to some extent a circular one. As the International Law Commission had noted, it made use of the device of *renvoi* to a preconceived notion of "archives". Since international law offered no solution to the problem of what constituted archives, reference had of necessity to be made to the internal law of States. Only the predecessor State and the successor State(s) could determine whether or not documents were archives. His delegation believed that reference to the internal law of the predecessor State was appropriate. It therefore viewed the United Kingdom amendment as a welcome effort to clarify and improve the text.

30. The Kenyan amendment, on the other hand, would have the effect of extending the definition of State archives to include all documents, of whatever nature, that had belonged to the predecessor State. That, however, created a need to define what was meant by "documents". His delegation did not believe that the problems of article 19 could be solved in that way.

31. Several speakers had suggested that further efforts should be made to find objective criteria for the definition of State archives. He hoped that those efforts would be successful.

32. Mr. EVANS (Observer for the United Nations Educational, Scientific and Cultural Organization) was pleased to note that documentation prepared by UNESCO on the question of archives had been of use to the International Law Commission. As had already been noted, no single definition of archives existed under international law. On the basis of its experience, however, UNESCO had developed an operational definition of the term, which it found served as a useful common denominator. According to that definition, archives were described as the non-current documentary material, regardless of physical form or characteristics, created or received and maintained by an institution in the conduct of its business. It was clear that documentation classified as archival in character could be either current (active) or non-current (inactive). For pragmatic reasons, UNESCO had confined its working definition to non-current material.

33. Mr. THIAM (Senegal) said that the International Law Commission had made commendable efforts to develop a suitable definition of State archives. It would be useful to hear from the Expert Consultant to what extent the Commission had considered the inclusion of the second element, namely, that archives were documents that had been kept by the predecessor State as archives, to be necessary in the definition.

34. His delegation reserved its position on the United Kingdom amendment, which it did not regard as a drafting change. That amendment appeared to alter considerably the substance of the provision, giving it a meaning which was precisely the one that the Commission's text and the Kenyan amendment endeavoured to avoid.

35. Mr. ASSI (Lebanon) said that he understood the desire of some delegations to find a more specific definition of State archives, not based solely on criteria of the predecessor State. He therefore supported the Kenyan amendment to article 19. At the same time, he suggested the addition to the article, as an opening phrase, of the words "Unless otherwise agreed or decided,". That would provide for the possibility of an agreement between the States concerned or a decision by an international body in the event of disagreement.

36. Mr. ECONOMIDES (Greece) said that his delegation considered the text proposed by the International Law Commission for article 19 satisfactory. The United Kingdom amendment markedly improved the text but it was really a matter of drafting. His delegation took a flexible position on the actual wording to be adopted.

37. Mr. LAMAMRA (Algeria) said that the International Law Commission's definition of State archives did not completely satisfy anyone and the amendments which had been proposed were representative of the two main trends of criticism of the provision. The United Kingdom amendment involved, not drafting, but substance. In his view, it weakened the entire definition. Displacement of the reference to internal law would affect the nature and number of the archives which formed the object of succession. A decision on the United Kingdom amendment should, he felt, be taken by the Committee of the Whole itself.

38. The Kenyan amendment was rightly concerned with precluding the possibility that some archives might not pass with the succession of States, but it also presented the danger that some documents which were not archives might become the subject of controversy between the States concerned. His delegation therefore proposed that the words "and had been kept by it as archives" in article 19 should be replaced by "and had been kept by it for official, historical, economic, scientific, practical and other purposes".[2]

39. Mr. TARCICI (Yemen) said he hoped that the delegations of Algeria and Kenya would be able to submit a common proposal. Meanwhile, his delegation fully supported the Kenyan amendment. Article 19, as proposed by the International Law Commission, gave too much latitude to the predecessor State to determine which documents should be considered archives. That State might be tempted, for example, to classify some documents as reference documents for archaeological or university research.

40. Mr. TÜRK (Austria) said that his delegation was satisfied with the text of article 19 as drafted by the International Law Commission. It could also support the United Kingdom amendment to the article, as adding precision. It had the same difficulty with the Kenyan amendment as had other speakers. Should that

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[2] Subsequently issued under the symbol A/CONF.117/C.1/L.34.

amendment be adopted, it proposed that the words "means all documents of whatever kind which . . ." should be replaced by "means documentary material of whatever kind amassed and deliberately preserved by State institutions in the course of their activities, which . . .".[3]

41. Mr. BEDJAOUI (Expert Consultant) said that the International Law Commission had had particular difficulty with the definition of State archives. The text proposed had been criticized as tautological. In article 8, dealing with the case of State property, the Commission had tried to meet that criticism by referring to "rights and interests", as well as to "property". In that article it had also referred to the date of the succession of States and the internal law of the predecessor State.

42. It had endeavoured to follow the same course in defining State archives, but it had been able to find only the word "documents" to describe the latter and that gave the impression of tautology. He was grateful for the suggestions which had been made with a view to improving the definition.

43. A question which had been raised was which body of rules should be determining—international law or internal law—and, if the latter, whether it should be the internal law of the predecessor State or that of the successor State. International law could not greatly help, since it contained no definition of archives except in conventional law, as for example in the Agreement of 23 December 1950 between Italy and Yugoslavia. It would be necessary to rely on agreement between the States concerned. It was not possible to leave the matter to international jurisdiction since that in turn would have to rely on the internal law of States in order to resolve the problem. The internal law of the predecessor State was certainly not always a satisfactory criterion, but it was difficult to do without it since the successor State could not unilaterally decide on the definition of State archives. The same problem had arisen with the definition of State property in article 8.

44. Since there was no criterion in international law for defining State archives, the International Law Commission had been obliged to refer to the internal law of the predecessor State. As the discussion had shown, that reference was unsatisfactory but it was hard to avoid. As in the case of State property in article 8, a successor State could not unilaterally determine what were to be State archives. Some members of the International Law Commission had suggested omitting the definition or placing it in article 2, but that was no solution. A definition was needed. He felt, however, that to adopt the proposal made by the Lebanese representative would be to capitulate in advance.

45. As the UNESCO representative had pointed out, there was no internationally accepted definition of archives. It had been asked whether the term "archives" could cover works of art. In that connection, he pointed out that the commentary on article 19 made it clear that some works of art had indeed been treated as archives when accompanying archives. Also, an ancient manuscript could be part of historical archives and at the same time a work of art because, for example, of its illuminations.

46. Some national legislators were very specific as to the date on which a document became part of archives. Similarly, they gave the exact date on which those archives could be made public. However, under no circumstances should article 19 give the impression that all "living archives" that were essential for the running of a country were excluded from its scope. Besides, provision was made for administrative archives in specific cases in later articles.

47. Mr. MUCHUI (Kenya) thanked the Expert Consultant for his explanation. He confirmed that his delegation was prepared to give serious consideration to the Algerian amendment when it was circulated as a document, although it was not necessarily prepared to withdraw its own amendment. It was generally agreed that the International Law Commission's definition was too broad, but he was not convinced that accepting the Algerian amendment would remedy that, for it did not seem to make clear what would be excluded from the definition.

The meeting rose at 6 p.m.

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[3] Subsequently issued under the symbol A/CONF.117/C.1/L.35.

19th meeting

Tuesday, 15 March 1983, at 9.40 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 19 (State archives) (*continued*)

1. Mr. LAMAMRA (Algeria) noted that it was clear from the commentary that in its important pioneering work in seeking a definition of "State archives" which would anwer the specific needs of the process of succession the International Law Commission had encountered a number of difficulties. The principal defects of the resultant definition in article 19 were its circularity and the determining role given to the internal law of the predecessor State, prompting the fear that a sizeable category of State archives generally known as "living archives" might not be covered by the rule governing the passing of such archives to the successor State.

2. The amendment proposed by his delegation (A/CONF.117/C.1/L.34) had three main purposes: to avoid giving the impression of defining the meaning of "archives" by using the term "archives"; to make the definition more precise and to give it greater substance by referring to the purposes for which the documents in question had been kept by the predecessor State; and to limit as far as possible any potential misapplication of the provision in reliance on the pre-eminence accorded to the internal law of the predecessor State, since the wording proposed by the Commission tended to imply that that law might also be taken as a frame of reference for defining the nature and scope of "State archives" for the purposes of article 19. The amendment proposed by the United Kingdom delegation (A/CONF.117/C.1/L.20), incidentally, tended precisely to strengthen the basis for such misinterpretation.

3. The definition of State archives as amended by his delegation took the form of an enumeration of "purposes" which was meant to be exhaustive; for that reason it included the words "and other", after listing five specific purposes. The adjective "official" was used in the Algerian amendment in preference to any other because it was broad enough to cover living archives and at the same time neutral enough not to prejudge the question of the transmissibility of certain archives, including, for example, those the passing of which might harm the security of the predecessor State.

4. By and large, the other adjectives were largely self-explanatory and corresponded to generally recognized fundamental rights. The word "practical", however, perhaps called for comment. It was intended to cover a variety of documents associated with everyday activities carried on by the predecessor State in the territory affected by the succession. In the case of a newly independent State, particularly one whose territory had been the scene of hostilities prior to the succession, such documents might, for instance, include maps of minefields laid by the predecessor State, thus enabling the successor State to deactivate them and so prevent civilian casualties.

5. The amendment retained the word "kept" used by the Commission, because it conveyed the idea of preservation, appropriate to the nature of archives.

6. It had been suggested in connection with the Kenyan amendment (A/CONF.117/C.1/L.27) that the deletion of the words "and had been kept by it as archives" implied that all documents of whatever description held by the predecessor State, whether archives or not, could be claimed by the successor State. That criticism was unfounded since the definition as amended was not a substitute for the complex machinery for the passing of archives, firmly rooted in equity, established by the draft articles for the different cases of succession. It was also understood that the documents which passed were those necessarily linked to the activity of the predecessor State in the territory in question; it was quite legitimate for the successor State to wish to possess those documents, since they would be as necessary to the latter as they had been to the predecessor State in discharging the identical responsibilities.

7. Mr. SUCHARIPA (Austria) said that, in proposing its amendment (A/CONF.117/C.1/L.35), his delegation had been motivated by three important considerations. First, it wished to avoid a circular definition; second, it wished to avoid a definition that would be so broad as to be almost useless; and third, wishing to employ language that was familiar to delegations, it had used the terminology of the first definition cited in paragraph (2) of the Commission's commentary to article 19.

8. Mrs. OLIVEROS (Argentina) said that her delegation endorsed the idea behind the draft article. The term "State archives" should be regarded as applying to all documents of whatever kind that fulfilled two conditions: they must have belonged to the predecessor State in accordance with its internal law and they must have been kept by that State as archives. She stressed, however, that the second condition was not subject to the qualification "in accordance with its internal law", so as to forestall any temptation on the part of the predecessor State to exclude all or some of the public documentary material from the scope of the article.

9. From that point of view the United Kingdom amendment was insufficiently clear and was not acceptable to the Argentine delegation. The Algerian amendment, on the other hand, was acceptable in that its more detailed description of the type of public document in question corresponded to her delegation's view of what constituted "archives".

10. Mr. ABED (Tunisia) suggested as a drafting change that, for the sake of consistency with other articles of the draft, in particular articles 8 and 31, the opening phrase of article 19 might be amended to read: "For the purposes of the articles in the present Part".

11. So far as substance was concerned, he shared the view of other delegations that the phrase "and had been kept by it as archives" was not particularly satisfactory.

12. He regarded the amendment proposed by the United Kingdom not merely as one of form but as affecting the essential substance of the draft article. As such, he could not support it and endorsed the reservations expressed by other delegations with respect to that amendment.

13. He believed that the amendment proposed orally by the representative of Lebanon at the previous meeting, that the words "unless otherwise agreed or decided" should be included, was inappropriate in the context of a defining clause. It was also undesirable because, as the Expert Consultant had said, it would represent a capitulation.

14. The Algerian delegation's amendment reflected an understandable concern to avoid circularity, but was no great improvement because any definition based on a list of cases could only be approximate and was also potentially dangerous, because any chance omission might be interpreted as an exemption.

15. The Austrian delegation's amendment had the advantage of clarifying the first part of the article but suffered from the defect of retaining the words "and had been kept by it as archives", which his delegation regarded as obscure and open to varying interpretations. The ideal solution would be to combine that

amendment with the Kenyan amendment so that the article would read: "For the purposes of the articles of the present Part, 'State archives' means documentary material of whatever kind amassed and deliberately preserved by State institutions in the course of their activities which, at the date of the succession of States, belonged to the predecessor State according to its internal law."

16. Mr. NAHLIK (Poland) said that article 19 was a very important provision and must be made as clear as possible since, as part of the introduction to the section of the future convention relating to archives, it would apply to all cases of succession. State archives, as a part of the cultural property of a State, had an extremely rich history in terms of their status in international law; every peace treaty concluded since the middle of the seventeenth century had included a specific clause dealing with that aspect, although solutions had varied greatly from case to case.

17. A great deal of thought had been given to the definition proposed by the International Law Commission. There were also opposing and supporting arguments for each of the proposed amendments. Since it would be dangerous to take a premature and hasty decision on the question, in which certain delegations might be motivated by political considerations prompted by their particular circumstances, he suggested that it might be useful to form a working group to study the question carefully and to find a generally acceptable solution.

18. Mr. RASUL (Pakistan) said that he understood the intention behind the Algerian amendment but thought that, as it stood, it might give the impression that a document, in order to qualify as a State archive, must serve all the purposes listed. He suggested that the word "and" between the words "practical" and "other" should be replaced by the word "or". If that suggestion was acceptable to the Algerian delegation, the last part of the amendment might be further revised to read: "official, historical, economic, scientific, practical or any other purpose".

19. Mr. EDWARDS (United Kingdom) said that he understood the concern underlying the amendment proposed by Kenya but agreed with the Expert Consultant that it was far too imprecise and might lend itself to an infinite number of interpretations.

20. He was unable to support the proposal made by the Algerian delegation, for similar reasons; while giving the appearance of precision and comprehensiveness, it still left open the question what exactly was meant by the expression "and had been kept by it as archives".

21. The Austrian delegation's amendment at first sight offered a promising definition, and his delegation could support it, subject possibly to a few minor drafting modifications.

22. His delegation had listened carefully to the interesting debate on the draft article under consideration. It had been particularly struck by the intervention of the observer for UNESCO, which it believed contained some most interesting points and ideas.

23. Several speakers had characterized the United Kingdom's proposal as fundamentally a drafting amendment. Since it was largely designed to avoid circularity in the definition, it was true that the amendment was largely technical. It was made in an effort to be helpful. However, his delegation had also wished to apply a test to the phrase "and had been kept by it as archives" which, in the Commission's draft article, seemed excessively vague and indefinite. As the Expert Consultant had said the day before, there were no international legal rules governing the complex subject of archives, and it was quite clear that practice varied from country to country. Accordingly, his delegation's proposal that the internal law of the predecessor State should apply to both the ownership and the "keeping" aspects seemed to be the only realistic solution.

24. One or two delegations had claimed that the United Kingdom proposal would leave out of the scope of the articles all "living" archives that had not yet found their way into the public domain and that it would therefore be necessary to wait for many years before such archives could be covered by the proposed convention. That in fact was a misconception. For official documents to be considered part of United Kingdom State archives it was not necessary that they should have entered the public domain; that was an entirely separate matter which had to do with access to such documents by members of the public. All government documents, as soon as they were created, formed part of the United Kingdom Government's archives.

25. In all the circumstances, he would not press his delegation's amendment to a vote, but suggested that, in view of the unsatisfactory features of the definition as proposed by the Commission, the Drafting Committee should be instructed to give advice concerning the drafting of a satisfactory provision and to co-ordinate and review the final drafting of whatever text was adopted by the Committee.

26. Mr. PHAM GIANG (Viet Nam) said that he interpreted the definition proposed by the International Law Commission as an attempt to cover the broadest possible range of documents relating to all fields of human activity, irrespective of their shape or form. The definition had three essential elements: the core definition of State archives as "documents of whatever kind"; the reference to the internal law of the predecessor State as determining, in the last instance, what constituted a State archive; and the existence of archives not classified as State archives in accordance with the internal law of the predecessor State but "kept as archives" by that State.

27. Some delegations, however, had objected that that definition was too vague and wished to add some more specific language. His delegation regarded the definition as very general and in the nature of a synthesis and could accept it in the absence of any more satisfactory version, while remaining ready to consider any proposals designed to improve it. The ideal definition should be both synthesis and analytical.

28. The Algerian amendment was a step in the right direction, although its formulation still had limitations. For the sake of greater precision, the word "cultural" should be added after the word "historical" and the word "administrative" should be inserted after the word "economic".

29. With regard to the amendment proposed by the United Kingdom, he agreed with the Expert Consultant that the proposal objectively reduced the scope of the definition of State archives.

30. The Kenyan amendment conflicted with the intention of the Commission to avoid creating a situation in which a predecessor State might withhold certain recently produced public papers.

31. His delegation would thus accept the Commission's draft article in the absence of any better proposal, while being ready to agree to the Algerian amendment. He sympathized with the suggestion of the representative of Poland that a working group should be set up to study the various proposals and devise a more fully satisfactory definition.

32. Mr. DJORDJEVIĆ (Yugoslavia) expressed the view that the International Law Commission had been fully justified in its decision to take the internal law of the predecessor State as an appropriate criterion for the purpose of determining what were State archives. As regards the second, equally necessary criterion —that the documents must have been kept as archives by the predecessor State—the Commission had refrained from qualifying it by any reference to the internal law of the predecessor State in order to avoid the risk that so-called "living" archives might be excluded from the scope of the convention simply because they were not designated as archives under the domestic laws of certain predecessor States. It should be noted that the Commission had intended the two criteria to be treated as separate and mutually independent. The amendment proposed by the United Kingdom, by making both criteria subject to the internal law of the predecessor State, substantially deviated from that intention and disturbed the balance which the Commission had sought to establish. For that reason, the United Kingdom amendment was not acceptable to his delegation. The Kenyan amendment, designed to eliminate the second criterion altogether, was likewise unacceptable to his delegation, principally because it deprived the successor State of an important additional guarantee.

33. His delegation was prepared to accept article 19 as it stood, but would consider the suggestions contained in both the Austrian and, particularly, the Algerian amendments if the Committee considered the International Law Commission's text to be unsatisfactory.

34. Mr. PIRIS (France) pointed out that the working out of a definition of State archives went considerably beyond the scope of the problem of the succession of States; it was a highly technical and specialized matter. His delegation was prepared to accept the International Law Commission's draft, subject to the amendment submitted by the United Kingdom, which added a welcome precision to the text, as the representatives of the United Kingdom, Austria and the Federal Republic of Germany had explained.

35. If there was any substantial departure from the International Law Commission's draft, many delegations would put forward their own views on the matter and it would be difficult to reach a solution. Moreover, the Committee of the Whole already had before it three written draft amendments by Kenya, Algeria and Austria and a number of oral amendments. His delegation was opposed to the adoption of the Kenyan amendment which, as had been pointed out, would expand *ad infinitem* the meaning of State archives. The term would then apply to all papers, of whatever kind, which belonged to the State. That would be going far beyond what archivists and administrators understood by "State archives".

36. In his delegation's view, the scope of the Algerian amendment would be the same as that of Kenya. It, too, was much wider than the definition recognized and accepted by professionals and State administrators. Such a definition had been worked out at numerous gatherings and congresses concerned with archives; reference might be made in that connection to the Warsaw Conference and, above all, to the definition given by Mr. Bautier at the Cagliari (Italy) meeting in 1977. In general, that definition covered all documents produced as a result of the functioning of the State, and not all documents belonging to the State.

37. On the other hand, his delegation found the amendment submitted by Austria interesting and would be prepared to consider it, despite its imperfections. It should be pointed out, however, that the Austrian delegation itself had stated that it was prepared to accept the International Law Commission's text. If the Committee wanted to work out a more precise definition, his delegation could propose a text based on the following ideas: "State archives" comprised all documents, of whatever form or material, which, emanating from the activity of the State, were produced and received by the State in the exercise of its functions, and the keeping of which was organized by the State with a view to the management of the territory and as historical documentation for research purposes. That meant, for example, as the International Law Commission had noted incidentally in its commentary, that not all documents belonging to the State were necessarily State archives. That was true, for example, of written documents kept in libraries, sound documents kept in sound libraries, filmed documents kept in film libraries, and of course objects kept in museums. The archives of those various institutions, which kept documents for historical, scientific, cultural and other purposes, were not State archives as such and should therefore not be covered by the definition in article 19.

38. The French delegation endorsed the Polish representative's view that the Committee should not lightly opt for one definition or another. There again, the matter under consideration was a technical definition of archives in international law, which would lead the discussion a long way from the sphere of international law on the succession of States. In that technical field, the basis should be the work of international experts on the subject, as the representative of UNESCO had already pointed out. It was perhaps not the moment, however, to embark on a search for a very precise definition, and it would therefore probably be wiser to retain the text drafted by the International Law Commission.

39. With regard to the point raised by one delegation concerning "living" archives, the French delegation considered that they were documents which were

directly necessary to the management and administration of the territory of the successor State and, as such, were transmitted to it by the predecessor State.

40. In any event, article 19 should preserve the two criteria adopted by the International Law Commission, namely, that they belonged to the predecessor State according to its internal law and that they had been kept by it as archives. As the possible transfer of certain State archives should take place, in principle, at the date of the succession of States (see article 21), it would be impossible to avoid a reference to the internal law of the predecessor State.

41. Mr. SUCHARIPA (Austria), replying to a point made by the representative of Tunisia, said that his delegation would be prepared to combine its amendment with that submitted by Kenya, so that the text of the article might read: ". . . means documentary material of whatever kind amassed and deliberately preserved by State institutions in the course of their activities which on the date of the succession of States belonged to the predecessor State according to its internal law".

42. Mr. BROWN (Australia) said that his delegation supported the United Kingdom amendment, which expressed the principle inherent in article 19 more clearly than the existing draft. However, if that amendment was not put to the vote, his delegation would support the text as it stood. Referring to the Algerian and Austrian amendments, he said that since it was impossible to define the meaning of "archives" in terms that would cover all cases and since international law offered no guidance in the matter, the internal law of the predecessor State remained as the only workable criterion. That conclusion had already been reached with regard to article 8. As a former dependent territory of the United Kingdom, Australia had no objection to the choice of that criterion. The archives of the United Kingdom were well preserved and accessible to all, free of charge, in conditions of comfort and convenience. Any restrictions on access which might exist were merely temporary in nature. The arrangements made in the United Kingdom in respect of archives might, therefore, be cited in support of retaining the reference to the internal law of the predecessor State.

43. Mr. ECONOMIDES (Greece) associated himself with the views expressed by the French representative. Two main schools of thought on the matter of State archives appeared to be represented among members of the Committee. The first considered that the definition of "State archives" should rely principally on the internal law of the predecessor State, a view reflected in the International Law Commission's draft and, still more explicitly, in the United Kingdom amendment. The other school favoured a definition of State archives without reference to internal law. For his part, he preferred the former approach and considered the text proposed by the United Kingdom to be the most satisfactory of all those before the Committee.

44. Mr. FAYAD (Syrian Arab Republic) said that the dissatisfaction with the text of article 19 expressed at the previous meeting—a dissatisfaction which had given rise to a plethora of amendments, both written and oral—seemed, after discussion, to have given place to the view that the International Law Commission's definition, brief as it was, might after all be acceptable. The criterion of the internal law of the predecessor State had already been adopted in articles relating to State property, so that its adoption in the provisions concerning State archives as well would be perfectly consistent. The other criterion employed by the International Law Commission, that the documents in question must have been kept by the predecessor State as archives, also seemed satisfactory, especially in the light of the French representative's warning against excess of detail. He would support the International Law Commission's draft in preference to any of the amendments thereto.

45. Mr. MUCHUI (Kenya), while welcoming the United Kingdom representative's explanatory remark concerning the treatment of official documents under the law of the United Kingdom, said that what was true of the internal law of one predecessor State was not necessarily true of the law of all others. The Kenyan delegation's amendment had not been directed specifically at the United Kingdom, and the problem which it was designed to resolve—that of the risk of "living" archives being excluded, wholly or in part, from the scope of the convention—had not been disposed of by the United Kingdom representative's disclaimer. The Algerian amendment represented a commendable effort to solve that problem as well as to meet the criticism of some speakers that the Kenyan amendment was too sweeping. However, the Algerian text, like any enumeration, was not necessarily exhaustive and might inadvertently fail to cover some documents.

46. Although his delegation was not fully convinced that its amendment was indeed too wide and therefore unacceptable, it was prepared, in a spirit of compromise, to show some flexibility by combining that amendment with the Austrian text along the lines suggested by the Austrian representative. In that case, Kenya would wish to insert the word "all" before the words "documentary material of whatever kind" and would also suggest the deletion of the word "deliberately" before the words "preserved by State institutions". In making those suggestions, he emphasized that they did not necessarily represent his delegation's final position in the matter, and expressed sympathy with the Polish representative's suggestion for further consultations of a formal or informal nature. Lastly, he agreed with the Australian representative that United Kingdom archives were well preserved and could be freely consulted, but drew attention to the fact that many problems remained unsolved as to the ownership of those archives and that retrieval programmes were, as a result, seriously hampered.

47. Mr. EVANS (Observer for the United Nations Educational, Scientific and Cultural Organization) said that UNESCO welcomed the elaboration of an international instrument on a topic of which the Organization had extensive experience. In attempting to define the nature of State archives it was important to bear in mind the distinction to be drawn between archives and other types of State property, on the one hand, and that between archives and cultural property, on the other. Archives were a unique category of State property in that they were essential both to a nation's identity and

to the very sovereignty of the State itself. As such they were to be regarded, as several earlier speakers had pointed out, as inalienable. It was their relationship to the sovereignty of the State that distinguished archives from other forms of cultural property that a State might naturally wish to preserve.

48. Mr. TARCICI (Yemen) said that his delegation supported the Algerian delegation's amendment to article 19 and suggested as a minor drafting change that in that text the words "and other purposes" should be replaced by "or other purposes".

49. Mr. BRISTOL (Nigeria) said that his delegation supported the Tunisian suggestion for amalgamating the amendments proposed by Kenya and Austria, and suggested the deletion in the Austrian amendment of the words "amassed and deliberately" so that the text would read: "For the purposes of the articles in the present Part, 'State archives' means documentary material of whatever kind preserved by State institutions in the course of their activities which, at the date of the succession of States, belonged to the predecessor State according to its internal law." In that way it would be internal law which qualified ownership.

50. Mr. TEPAVITCHAROV (Bulgaria) said that the definition in article 19 as proposed by the International Law Commission contained three main elements. First, the concept "State archives", which was adequately explained in the commentary and with which his delegation fully agreed, although it had some doubts concerning the status of material of historic and cultural heritage considered to be archives but not kept as such; second, the requirement that such documents must have belonged to the predecessor State according to its internal law, which was quite logical; and third, the requirement that the documents must have been kept as archives, that requirement not being qualified by the words "according to its internal law". In that connection he said that he interpreted the amendment proposed by the United Kingdom to mean that both of those requirements would be qualified by the reference to internal law. In his opinion such an amendment was not a mere drafting change but would involve a change of substance. The second requirement, in the article as it stood, was not qualified by a reference to internal law; he took the view that ample guidance on that point was offered by international practice, which should be taken into account in any description of archival documents, whatever might be the institution or the premises holding such documents. The definition proposed by the International Law Commission was therefore both broad and flexible enough to allow both predecessor and successor States to present solid arguments in support of any claims or counter-claims as appropriate. His delegation fully appreciated the reasons, explained by the Expert Consultant, why the International Law Commission had detached the second requirement from the scope of internal law.

51. The attempt by Algeria in its proposed amendment to give specific meaning to the concept of archives by using the enumeration "for official, historical, economic, scientific, practical and other purposes", while avoiding the somewhat circular definition of the article as it stood, none the less gave rise to a definition within a definition as well as introducing an internal contradiction in the definition of "State archives". If the amendment were adopted, the article as so amended would refer at the beginning to archives as "documents of whatever kind" and at the end would attempt to define restrictively the purposes for which such documents had been kept. In effect, therefore, the article would contain a rather open-ended definition. To introduce the notion of "purpose" might create difficulties of interpretation, since it would not be clear, for example, what would be the precise legal meaning of "practical" purposes.

52. The definition proposed by the International Law Commission was acceptable to his delegation. The Algerian proposal went some way towards attempting to provide objective criteria, although it might be improved by the omission of some of the terms that had no generally or legally accepted meaning. A rule of international law like that under consideration should endeavour to cover whatever cases might arise in future. Because it wished the provision in question to cover living archives, his delegation would not like the definition to be narrower than the broad definition proposed by the International Law Commission.

53. His delegation had no comment on the Austrian amendment or the combined Austrian-Kenyan-Tunisian suggestion at that time. The drafting change suggested by Tunisia for the opening phrase of the article seemed to be quite acceptable and, as a drafting matter, would require no vote.

54. In conclusion he said it was clear from the debate that detailing and specifying the meaning of "State archives" was not an easy task, and his delegation therefore supported the suggestion that a working group should be formed to seek a solution acceptable to all delegations.

55. Mr. ROSENSTOCK (United States of America) said that it might be useful to allow time for informal discussion among those delegations which had proposed amendments and the representative of UNESCO, as it might be possible to prepare a more acceptable defining clause. His delegation supported the amendment proposed by the United Kingdom for the same reasons as those given by the delegation of Greece. It also believed that the Austrian amendment might provide a basis for further clarification and that the remarks of the observer for UNESCO should be taken into account. The comments by the delegation of Bulgaria concerning the proposed Algerian text should also be borne in mind, particularly the criticism of the rather open-ended nature of the Algerian definition, a criticism which might be equally applicable to the Kenyan amendment.

Article 16 (Separation of part or parts of the territory of a State) (*concluded*)*

56. The CHAIRMAN said that the Committee had concluded its debate on the article and he therefore invited it to vote on the revised amendments proposed by Pakistan (A/CONF.117/C.1/L.8/Rev.1).

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* Resumed from the 17th meeting.

57. Mr. KEROUAZ (Algeria), speaking in explanation of vote before the vote, said that his delegation welcomed the effort made by the representative of Pakistan to clarify the text of paragraph 1(*b*) of article 16, but felt unable to support the amendment proposed. The wording of article 16 was linked to that of other articles, in particular article 13. He recalled that the French delegation's similar amendment to paragraph 2(*b*) of article 13 (A/CONF.117/C.1/L.16 and Corr.1) had been rejected by the Committee. He felt, therefore, that the Committee would run the risk, if it adopted the changes proposed by Pakistan, of disturbing the balance and harmony of the draft as a whole. For that reason his delegation would vote against the Pakistani amendment to paragraph 1(*b*).

58. The CHAIRMAN invited the Committee to vote on the amendment proposed by Pakistan to paragraph 1(*b*) of article 16 (A/CONF.117/C.1/L.8/Rev.1).

The amendment to paragraph 1(b) was rejected by 30 votes to 18, with 12 abstentions.

59. The CHAIRMAN invited the Committee to vote on Pakistan's proposal that paragraph 1(*c*) should be deleted.

The proposal to delete paragraph 1(c) was rejected by 37 votes to 13, with 12 abstentions.

60. The CHAIRMAN said that, the amendment having been rejected, he would invite the Committee to vote on article 16 as proposed by the International Law Commission.

Article 16 as proposed by the International Law Commission was adopted by 46 votes to none, with 17 abstentions.

61. The CHAIRMAN said that a number of delegations wished to speak in explanation of vote.

62. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the Pakistani amendment to paragraph 1(*b*) because of its objection to the phrase "connected with the activity of the predecessor State" used in the International Law Commission's text. It had explained the grounds for its objection to that phrase in the discussion on paragraph 2(*b*) of article 13 (11th meeting). His delegation had also voted in favour of the deletion of paragraph 1(*c*), because it regarded the criterion of "equitable proportion" used in the original text as unsatisfactory. His delegation had, however, abstained in the vote on the article as a whole.

63. Mr. BRISTOL (Nigeria) said that his delegation had voted against the proposed amendment to paragraph 1(*b*) because the wording used recalled that proposed by France in connection with paragraph 2(*b*) of article 13, an amendment which had been rejected. It had also voted against the proposal to delete paragraph 1(*c*): that provision as it stood was based on the principle of equity and provided for situations which might not be covered by the preceding subparagraphs. His delegation had accordingly voted in favour of the article as proposed by the International Law Commission.

64. Mr. MURAKAMI (Japan) said that he had found the phrase "connected with the activity of the predecessor State" in paragraph 1(*b*) vague, and felt that it would be difficult to apply in practice. Because the Pakistani amendment would have improved the text, his delegation had voted for that amendment. His delegation had also voted in favour of the deletion of paragraph 1(*c*); despite the explanations offered by the Expert Consultant, it felt that the concept of "equitable proportion" was too imprecise to be used in specific instances of succession of States upon the separation of part or parts of the territory of a State.

65. Mr. ECONOMIDES (Greece) said that his delegation had been in favour of article 16 as drafted, but that it continued to regard the provisions of that article as being in some way incomplete. He thought that there was still time to review the problems created by the wording of the article, and he suggested that a working group might be established to discuss the issues involved.

66. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation had voted against the Pakistani amendments and in favour of article 16 as it stood. In the situations envisaged by article 16 it was not possible to establish more precise criteria and the broad formula proposed by the Commission was therefore more appropriate. In the case of paragraph 1(*c*), his delegation had felt that the criterion of "equitable proportion" was essential to the article as a whole and that subparagraph (*c*) should not be deleted.

67. Mr. DALTON (United States of America) said that the concept of "equitable proportion" lacked precision, and his delegation had therefore voted in favour of the proposal to delete the subparagraph in which it occurred. The subparagraph did not provide adequate guidance and might lead to increased possibilities of tension between the predecessor and successor States, together with a risk of confusion as to whether article 13 or article 16 applied in a given situation. He suggested that, for the purpose of dealing with possible controversies, an article concerning the settlement of disputes might usefully be added to the convention on the lines of the new article proposed by Denmark and the Netherlands (A/CONF.117/C.1/L.25/Rev.1 and Corr.1).

68. Mr. MIKULKA (Czechoslovakia) said that his delegation had voted in favour of the International Law Commission's balanced draft of article 16. The amendments proposed by Pakistan would impose undue restrictions on the successor State and were not justified either on grounds of equity or by international practice.

69. Mr. RASUL (Pakistan) said that his delegation had abstained in the voting on the text of the article as drafted by the International Law Commission. Its reasons for doing so were self-evidently the same as those which had prompted it to propose the amendments in the first place. None the less, because the Commission's draft contained a number of acceptable features, his delegation had abstained and had not voted against the Commission's text.

70. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had voted for both the amendments proposed by Pakistan. Its reasons for doing so had been explained in an earlier statement (17th meeting). The revised amendment to para-

graph 1(*b*) was a considerable improvement on the earlier version proposed by Pakistan. In the voting on article 16 as proposed by the International Law Commission his delegation had abstained because it did not consider the text completely satisfactory.

71. Mr. MUCHUI (Kenya) said that, while he appreciated the reasons why Pakistan had proposed its amendments, he was not convinced that they were sufficiently weighty to warrant the adoption of a text which would have disturbed the balance and consistency of the draft as a whole. He had therefore voted against the amendments.

72. The CHAIRMAN said that the text of article 16, as adopted, would be referred to the Drafting Committee.

The meeting rose at 1 p.m.

20th meeting

Tuesday, 15 March 1983, at 3.15 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 19 (State archives) (*continued*)

1. Mr. BEDJAOUI (Expert Consultant), commenting on proposals which had been made for amendment of article 19, said that the Algerian amendment (A/CONF.117/C.1/L.34) and the Austrian amendment (A/CONF.117/C.1/L.35) were based on paragraphs (2) and (3) respectively of the International Law Commission's commentary on the article (A/CONF.117/4). The Algerian amendment suffered from the drawbacks inherent in any enumeration, which always tended to be interpreted restrictively. It was therefore not surprising that the representatives of Viet Nam and Yemen had proposed to add other qualifiers to the list in that amendment.

2. The Austrian amendment was interesting, but the term "State institutions" was liable to be interpreted in different ways by States. It was open to question, for example, whether the definition would include the private papers of royal families or the archives of State economic institutions. In fact, it was difficult to equate "State archives" with "the archives of State institutions". The primary criterion for State archives was that they should indeed belong to the State, not to individuals, institutions or collectivities other than the State. There must be a common understanding on that point. The definition must be further refined by reference to the internal law of the predecessor State. There appeared to be some disagreement on whether or not the definition should make reference to internal law, but both the Algerian and Austrian amendments contained such a reference and it could not easily be excluded. The Austrian delegation had further explained that its amendment had subsumed the Kenyan amendment (A/CONF.117/C.1/L.27).

3. He welcomed the Tunisian oral amendment, submitted at the previous meeting, to replace the opening phrase of article 19 by the words "For the purposes of the articles in the present Part"; that constituted a distinct improvement.

4. In conclusion, he observed that his remarks at the eighteenth meeting of the Committee had not been intended to imply that a sufficiently broad definition would enable all archives coming under it to pass automatically to the successor State. The passing of archives was regulated by the specific articles containing provisions on that subject.

5. Mr. LAMAMRA (Algeria) said that his delegation was prepared to accept in its amendment the insertion of the word "cultural" after "historical", as proposed by the Vietnamese representative, and the proposal of the representative of Pakistan to substitute the word "or" for "and" before "other purposes". It was not necessary to add the word "administrative" to his delegation's amendment, as had also been proposed by the Vietnamese representative, since that concept was already covered by the words "official" and "practical".

6. Speakers who had not agreed with his delegation's amendment were divided into those who thought its definition too broad and those who considered its enumeration insufficiently exhaustive. In his view the six qualifiers in the amendment, supplemented by the words "or other purposes", were sufficiently exhaustive to meet all requirements. On the other hand, the definition should be as complete as possible, in view of the fact that the rules relating to the passing of State archives had yet to be discussed. The text his delegation proposed was based on a desire to maintain a balance between the internal legislation of the predecessor State and that of the successor State. It had been suggested that that definition would encompass museums, libraries and other institutions. Such was not the case. Although those bodies belonged to the State, they would naturally be subject to the provisions in Part II of the draft convention, which related to State property. In view of the fact that there was no universally accepted definition of State archives, the Conference should endeavour to find a definition adapted to the exclusive requirements of the proposed convention which dealt with some specific aspects of the succession of States.

7. He had no objection to the establishment of a working group to consider article 19. However, the Committee should give that group a chance of completing its work successfully by making it both small and representative and by ensuring that it had the necessary language services. The working groups should be requested to report as soon as possible to the Conference in plenary. Meanwhile, the Committee of the Whole should not delay its consideration of the other articles in Part III of the convention.

8. Mr. KADIRI (Morocco) said that in formulating the definition of State archives, the precedent of the approach to *jus cogens* in article 53 of the 1969 Convention on the Law of Treaties[1] might profitably be borne in mind. In the case of that instrument there had initially been attempts to establish an enumeration but it had been decided, finally, to rely on international practice and jurisprudence. Any enumeration must be restrictive and not exhaustive. The Austrian amendment was a laudable attempt to clarify the definition of State archives but the scope of the word "institutions" was uncertain. His delegation found the International Law Commission's text of article 19 acceptable as holding the balance between conflicting schools of thought. However, it might be improved, particularly by adoption of the Tunisian amendment to its opening phrase. He supported the proposal to establish a working group and hoped the group would work in a spirit of conciliation and compromise.

9. Mr. MIKULKA (Czechoslovakia) said that State archives were a specific element of State property governed by specific rules, as opposed to the rules that were generally applicable to State property as a whole. Part III of the draft convention, which set forth those special rules, should be seen as an exception to Part II, which applied to State property in general. Seen in that light, the definition of State archives assumed particular importance.

10. That definition should assist those called upon to interpret the convention in deciding whether particular documents were simply State property or whether they were the specific element of State property known as State archives, and consequently whether Part II or Part III of the convention should apply.

11. The text proposed by the International Law Commission contained three criteria for the definition of State archives: they should be documents; they should belong to the predecessor State; and they should have been kept as archives. In order to distinguish State archives from other types of State property, at least the first and third criteria must be met. The first element would not be sufficient unless complemented by the requirement that the documents should have been kept as State archives. The third element was important in deciding whether the documents were State archives or living documents. Without it, the definition would cover not only State archives but any documents whatsoever. Accordingly, his delegation could not accept amendments to article 19 which would have the effect of excluding the criterion that the documents in question should have been kept as State archives.

12. His delegation could accept the text proposed by the International Law Commission without difficulty, but if it was generally felt in the Committee that a more detailed definition was necessary, it would support the idea of establishing a working group.

13. Mr. MONNIER (Switzerland) said that his delegation could accept the International Law Commission's text. It could also accept the United Kingdom amendment (A/CONF.117/C.1/L.20), which it regarded as a drafting change. In Switzerland, as probably in many other countries, "living archives", although they were documents not available to the public for a certain period of time, were none the less regarded as archives.

14. In his view, the definition of State archives must display a minimum of rigour and of plausibility. The Kenyan amendment was lacking in both respects, since its undue broadening of the definition would have the effect of encompassing all documents belonging to the State. The Algerian amendment would have the same effect, since the concluding phrase, "or other purposes", indicated that the list it contained was not exhaustive and that any other purpose might be invoked. His delegation was therefore unable to accept either the Kenyan or the Algerian amendments.

15. It had been observed that the definition was only one element in the draft convention and that the passing of State archives was regulated by the provisions in section 2 of Part III. Such was indeed the case, but those regulations were based on the prior definition of State archives.

16. The Austrian amendment was a compromise solution for which his delegation had much sympathy. However, the word "amassed" used in the English version of the amendment seemed more suitable than the word "*constituée*" used in the French version, since the former did not necessarily imply that the documentary material concerned was the result of State activity. The material could consist of documents produced by State institutions, or of family or private documents relating to the political or public life of the State in question and donated to the State. That case would not be covered by the word "*constituée*". He would be glad to have the view of the proposed working group on that point.

17. Mrs. VALDÉS (Cuba) said that her delegation could support the text of article 19 as proposed by the International Law Commission, despite the difficulties to which reference had been made. The concern of members of the Committee was apparent from the number of written and oral amendments proposed but, as the discussion had shown, none of those amendments appeared to be altogether satisfactory. The Cuban delegation therefore supported the proposal of the Polish representative at the previous meeting that a working group be established. The group should be composed, basically, of the authors of the amendments to article 19 but it should also be open to participation by other delegations.

18. Mr. SHASH (Egypt) also supported the proposal to establish a working group. His delegation proposed,

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[1] *Official Records of the United Nations Conference on the Law of Treaties, 1968 and 1969, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

as a further amendment to be considered, that the present text of article 19 should be replaced by the following:

> "For the purposes of the present articles, 'State archives' means all documentary material of whatever kind amassed and preserved by States in the course of their current activities or for the purpose of conserving their historical and cultural heritage, which, at the date of succession of States, belonged to the predecessor State according to its internal law."

19. Mr. THIAM (Senegal) said that the debate clearly indicated that the definition proposed by the International Law Commission was still acceptable, despite its shortcomings. In his delegation's view, the United Kingdom's proposal to refer to the internal law of the predecessor State made little improvement to the Commission's definition, whose limitations should be clearly specified. The definition contained two cumulative criteria: that the documents should have belonged to the predecessor State under its domestic legislation and that they must have been kept as archives. What was lacking was a clear idea as to what documents should be included, other than those related to ownership or conservation. There existed no clear definition of State archives in international law and references to domestic legislation might restrict the number of transferable documents.

20. The Austrian amendment attempted to overcome the inadequacies of the Commission's text by relating the documents in question to the activities of State institutions. A reference to that link between the administration of State activities and its resulting documentation would be one way of improving the International Law Commission's text and did not run too great a risk of affecting the spirit of the various amendments. As a possible alternative, for further discussion, his delegation proposed that the following text should be submitted for the existing article 19:

> "For the purposes of the articles in the present Part, 'State archives' means all documents of whatever kind, linked with the administration by the predecessor State of the territory to which the succession of States refers and which at the date of the succession of States belonged to the predecessor State according to its internal law and had been kept directly by it or under its control."

21. That proposal had the advantage of using the Commission's text as a basis, embodying both the Kenyan and Austrian ideas, and also meeting the concerns expressed by the Polish delegation. The Senegalese delegation did not press for a vote on its proposal but if the ideas it contained, as well as those put forward by Austria and Kenya, were rejected, it would be unable to accept the United Kingdom amendment and would support the International Law Commission's text, possibly modified by the Kenyan and Austrian amendments. His delegation did not exclude the idea of establishing a working group to consider the definition of State archives in greater depth. Such a group might, in considering the amendments put forward, envisage adding the following phrase at the end of the Senegalese amendment: "as well as all other documents kept, directly or indirectly, by the predecessor State and regarded by it as archives".

22. Mr. BEDJAOUI (Expert Consultant) said that, while the Austrian amendment had considerable merit, some of the expressions used had given rise to difficulties of interpretation, some caused by the use of the expression "State institutions", and others by the use of the word "*constituée*" in the French version of the amendment. The problems were semantic ones which he would not attempt to resolve. The word "*constituée*" might indeed give the idea of the creation of archives, or of preparing them, in addition to simply amassing them. It might also suggest a case in which a State acquired archives by paying for them or receiving them as a gift. Its internal legislation made them State archives. Under the internal legislation of a number of countries both types of documents would also be considered to be archives amassed by the State in the manner implied by the French term "*constituée*".

23. The idea, embodied in the oral amendment proposed by the Senegalese delegation, of associating documents with the activities of the predecessor State in the territory to which the succession of States referred was an attractive one which avoided a large number of the difficulties involved in other amendments. However, he doubted whether State archives could really be defined satisfactorily that way, since it gave the impression that the predecessor State had no archives other than those associated with its activities in the territory involved in the succession of States, when the predecessor State in fact had other archives associated with its activities elsewhere, particularly in the part of its territory not involved in the succession of States.

24. Mr. MONNIER (Switzerland) thanked the Expert Consultant for his comments. His own query relating to the French version had been purely a drafting point and had not been intended to detract from the merits of that proposal.

25. Mr. OESTERHELT (Federal Republic of Germany) said that although the Algerian amendment to article 19 was a helpful attempt to make the definition of State archives more specific, it had the serious drawback of giving the same weight to the general, open-ended phrase "or any other purposes" as to the enumeration of specific elements that preceded that phrase. The Algerian amendment was therefore very similar to the amendment submitted by Kenya. His delegation did not believe that it was legally defensible or realistic to define State archives as all documents of whatever kind that had belonged to the predecessor State. He reiterated his delegation's support for the United Kingdom amendment.

26. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation could support the Algerian amendment with the incorporation of the additions suggested by the representative of Viet Nam. Alternatively, he could also support the Kenyan amendment which would prevent the predecessor State from taking undue advantage in the interpretation of the term "archives".

27. The amendment submitted by the United Kingdom would not, however, be acceptable to his delega-

tion. It was inappropriate to give the predecessor State the sole right to determine what constituted archives. Furthermore, that determination should not apply only to documents that belonged to the predecessor State at the date of the succession of States, since such a restriction could be used by the predecessor State to exclude documents which had been State archives before the date of succession.

28. His delegation also objected to qualifying as archives what the predecessor State had kept as archives. Leaving aside the question of abuse by the predecessor State, such a criterion could disqualify documents which at the date of succession happened to be in, or had been deliberately transferred to, another State.

29. The Austrian amendment constituted an improvement, but it did not take care of his delegation's principal concerns.

30. He supported the idea of establishing a small official working group to develop a common definition of archives. That group should take into account the proposal by the representative of Lebanon that the successor State should have an equal say in the matter of the transfer of archives to the successor State.

31. Mr. TÜRK (Austria), noting the considerable support expressed for the idea of establishing a working group on article 19, proposed that the Committee should now decide to set up such a group.

32. Following an exchange of views concerning the composition of the proposed working group, Mr. ROSENSTOCK (United States of America) moved the adjournment of the debate on the question of establishment of a working group to deal with article 19 and the amendments and sub-amendments thereto.

33. Mr. JOMARD (Iraq) and Mr. AL-KHASAWNEH (Jordan) supported the motion.

34. Mr. SHASH (Egypt) and Mr. MUCHUI (Kenya) considered that further discussion of the question was desirable.

The motion by the representative of the United States of America was rejected by 28 votes to 17, with 11 abstentions.

35. The CHAIRMAN suggested that the Committee should decide to establish a working group to review article 19 and the written and oral amendments and sub-amendments thereto. The group's task would be to prepare a generally acceptable text for article 19 or, failing that, one or more possible texts, taking as the basis for discussion the text submitted by the International Law Commission. Since progress on the remainder of Part III of the draft articles hinged very largely on acceptance of a definition of the term "archives", he hoped that the working group would conclude its work with dispatch.

The suggestion of the Chairman was adopted.

Article 20 (Effects of the passing of State archives)

36. Mr. MAAS GEESTERANUS (Netherlands) said that article 20 resembled article 9 in that it posed the question of a possible interval in the passing of State archives from the predecessor to the successor State. In the case of article 9 the Committee had agreed to the insertion in the draft convention of an additional article which had been proposed by the delegation of Algeria. His delegation did not favour a similar solution in the present case, but thought it would be helpful to make it clear that, in the case of the passing of State archives, there was no extinction of the rights of the predecessor State without a simultaneous arising of the rights of the successor State. It had therefore submitted an amendment to article 20 (A/CONF.117/C.1/L.33) calling for the insertion of the word "simultaneous" between the words "the" and "arising" in that article.

37. Mr. LAMAMRA (Algeria) reminded the Committee that, upon the proposal of his delegation (A/CONF.117/C.1/L.22), it had adopted a new article 8 *bis* in connection with the passing of State property. For the sake of harmony a similar provision should be included in Part III as article 19 *bis*. The text might read as follows:

> "A succession of States has the effect of making the State archives of the predecessor State pass to the successor State in accordance with the provisions of the present Part."[2]

The meeting rose at 6 p.m.

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[2] Subsequently issued under the symbol A/CONF.117/C.1/L.39.

21st meeting

Wednesday, 16 March 1983, at 10.15 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 20 (Effects of the passing of State archives) (*continued*)

1. Mr. HOSSAIN (Bangladesh), after apologizing for his delegation's late arrival at the Conference, reiterated his Government's position as reflected in its statements in the Sixth Committee of the General Assembly and expressed general support for the articles under consideration.

2. Mr. ECONOMIDES (Greece) said that he supported the Netherlands amendment to article 20 (A/CONF.117/C.1/L.33). That the arising of the rights of the successor State was simultaneous with the extinction of the rights of the predecessor State was self-evident; however, it was preferable that it should be stated explicitly.

3. Mr. LAMAMRA (Algeria) said that, while hesitating to contribute towards a repetition of the earlier debate on article 9 and the amendments thereto, he felt that the proposition inherent in the Netherlands amendment was not as self-evident as might appear at first glance. While the concept of simultaneity indeed applied to the majority of cases of succession, it did not do full justice to successor States which had been in existence before the colonial era, States placed under a protectorate régime, or newly independent States whose succession to the colonial Power had occurred before the ending of military occupation of a part of their territory. In such cases, the notion of simultaneity was open to doubt from both theoretical and practical points of view. In that connection, he recalled that the very notion of the "arising" of rights had been criticized in the Sixth Committee by third world countries other than his own; some delegations had suggested that a term such as "recovery" or "renaissance" or even "confirmation" might be more appropriate. As the summary records of the International Law Commission's thirty-third session indicated, the Commission had been aware of the problem but had not been able to devise new formulas for dealing with it satisfactorily. His delegation accepted that situation and was prepared to support the International Law Commission's text of article 20, as it had supported that of article 9.

4. It would be recalled that a French amendment to article 9 (A/CONF.117/C.1/L.21) incorporating the word "concomitant" had been discussed at length and had eventually been rejected at the Committee's 10th meeting. Consequently, article 9 did not contain the word "concomitant" or any reference to simultaneity. Should the Netherlands amendment to article 20 be adopted in spite of his delegation's objections, he would strongly oppose any attempt to reintroduce such a reference in article 9 that might be made on the grounds of harmony, consistency or logic. The matter was not one of drafting, and any reconsideration of article 9 would have to be governed strictly by the rules of procedure.

5. Mr. MURAKAMI (Japan) said that, notwithstanding the arguments just advanced by the Algerian representative, he continued to think that the Netherlands amendment proposed a drafting change and should be referred to the Drafting Committee with the request to consider it as one of the drafting suggestions made in the course of the debate in the Committee of the Whole.

6. Mr. ROSENSTOCK (United States of America) said that the possibility of a gap occurring between the extinction of the rights of the predecessor State and the arising of the rights of the successor State had provoked a great deal of discussion in connection with article 9. All delegations had agreed, and the Expert Consultant had confirmed, that no such gap was envisaged in the International Law Commission's text and that the two events were, in fact, simultaneous and concomitant. The French delegation, in an effort to settle the issue once and for all, had introduced the word "concomitant" into its amendment to article 9, an amendment which the Committee had indeed rejected but on grounds quite unconnected with the use of that word. Since then, the Drafting Committee had been held up in its work by the unresolved question whether it was entitled to incorporate the concept of simultaneity in the text of article 9 even though it had been rejected by the Committee of the Whole when it had considered the French delegation's amendment to that article. Some delegations, including his own, were in favour of including it, while others, for reasons which he failed to understand, objected to such a course. In his view, it was completely irrelevant whether the arising of the rights of the successor State took place for the first or second time. In that connection, he questioned the appropriateness of the English word "arising" as an equivalent of the French word *naissance*. Be that as it might, the matter was, of course, a drafting one and should be treated as such.

7. Mr. BROWN (Australia) said that he supported the Netherlands delegation's amendment, which merely spelt out a concept that was in any case implicit in the International Law Commission's draft. However, if that amendment were not adopted, his delegation would support article 20 as it stood.

8. Mr. PÉREZ GIRALDA (Spain) said that his delegation would support the Netherlands amendment to article 20, as it had supported the French delegation's amendment to article 9. He recollected that there had been a consensus within the Committee on the implicit recognition of the notion of simultaneity in article 9 and all other corresponding articles of the draft convention. The opposition of delegations to the French amendment had been based chiefly on the fact that it had included other possible changes to article 9, in particular the introduction of the word "identical" to describe rights. A lengthy discussion had taken place in the Drafting Committee on the question whether that Committee's terms of reference empowered it to insert the word "simultaneous" in the text of article 9. Now that the matter had come up once more in the Committee of the Whole there was no reason why that useful improvement should not be made.

9. Mr. de VIDTS (Belgium) said that he had no difficulty in supporting the Netherlands delegation's amendment, especially since in paragraph (1) of its commentary on article 9 the International Law Commission itself referred *expressis verbis* to the simultaneity of the extinction of the rights of the predecessor State and the arising of those of the successor State.

10. Mr. IRA PLANA (Philippines) said that, while agreeing with previous speakers that the insertion of the word "simultaneous" in article 20 would merely confirm the notion of continuity already implicit in the text, he had reservations as regards the Netherlands amendment because the presence of the word in article 20 and its absence in article 9 might give rise to confusion as to the validity of those provisions read in relation to each other.

11. Mr. PAREDES (Ecuador) said that his delegation had objected to the French delegation's amendment to article 9 for a number of reasons but had not opposed the inclusion of the word "concomitant", which, in

his view, would have enhanced the legal force of that article. For the same reasons of a legal nature, his delegation supported the Netherlands amendment to article 20.

12. Mr. EDWARDS (United Kingdom) said that he supported the Netherlands amendment. Without wishing to reiterate all the arguments advanced in connection with article 9, he recalled that his delegation had expressed dissatisfaction with the terms "extinction" and "arising" used in that article and would have preferred them to be replaced by others; however, if those words had to be maintained, it regarded the addition of the word "simultaneous" as essential.

13. Mr. DELPECH (Argentina) said that he supported the International Law Commission's draft with its implicit recognition of the principle of simultaneity in the passing of rights upon a succession of States. He added that the Drafting Committee's task was strictly limited to improving the language of texts referred to it; changes of substance should be discussed only in the Committee of the Whole.

14. Mr. SUCHARIPA (Austria) said that his delegation had hoped that article 20 would not give rise to lengthy discussion, since all arguments had been sufficiently expounded and debated in connection with article 9. Since, however, the debate was taking place, he wished to place it on record that, as the sponsor of an amendment, subsequently withdrawn, to article 9 (A/CONF.117/C.1/L.2), his delegation naturally supported the Netherlands amendment to article 20 and invoked the same grounds as those stated by the Belgian delegation. If the amendment was not accepted, his delegation would be unable to support the article as drafted by the International Law Commission.

15. Mr. BEN SOLTANE (Tunisia) said that the fact that agreement had been reached on the wording of article 9 to be forwarded to the Drafting Committee should not be taken as implying that other subsequent articles should not be adequately discussed: each article had its own specific features and underlying logic.

16. His delegation felt obliged to support the text of article 20 as it stood, although for mainly historical reasons it found the text less than wholly satisfactory. The Netherlands amendment would tend to make the article too specific, an approach which would, if applied throughout the draft articles, result in a convention which was unwieldy and difficult to apply in practice.

17. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation supported the Netherlands amendment for reasons it had outlined in its statements in the debate on article 9. The amendment provided a useful clarification of the understanding achieved in the discussion on that article and of the true meaning of the "passing" of rights. His delegation had stressed that there was no gap between the "extinction" and the "arising" of rights and had proposed an amendment clarifying the point (A/CONF.117/C.1/L.3), which it had subsequently withdrawn in the light of the understanding that seemed to have materialized concerning the real meaning of article 9. He had therefore been surprised when the representative of Algeria had suggested that there could be exceptional cases in which the "extinction" and "arising" of rights could be other than simultaneous or concomitant. It was not clear to his delegation what those exceptions were and how they could exist.

18. Mr. MAAS GEESTERANUS (Netherlands) said that he could not accept any imputation that his delegation's purpose in proposing its amendment was to initiate a futile debate. On the contrary, its aim had been to find a satisfactory compromise and, ultimately, to arrive at a convention whose text would be acceptable to all States.

19. Mr. LAMAMRA (Algeria) said that the summing up of the situation with regard to articles 9 and 20 provided by the representative of the United States did not fully accord with the Algerian delegation's assessment of that situation. In particular, it did not agree that it could be inferred from the earlier debate that a certain consensus had been reached on the issue of the simultaneity of the passing of rights from the predecessor to the successor State.

20. The Algerian delegation had not intended to disparage the intentions of the representative of the Netherlands; it had merely wished to avoid an unnecessary recapitulation of the earlier debate on article 9. As to the proposed amendment to article 20, his delegation was not convinced of the need to add the word "simultaneous" to the draft, and would vote against it if it was put to the vote. However, he suggested that, if the amendment should be adopted, the text should be modified to read "a succession of States entails the extinction of the rights of the predecessor State and the simultaneous arising, in appropriate cases of succession, of the rights of the successor State . . .". The point of his suggestion was that, while simultaneity was acceptable in many cases of succession, there were some cases in which it could not be justified from a juridical or theoretical standpoint. He stressed that the amendment was intended to be complementary to the Netherlands amendment, but that his delegation would prefer the original draft proposed by the International Law Commission.

21. Mr. ROSPIGLIOSI (Peru) said that in both the Committee of the Whole and the Drafting Committee there was a general agreement that there must be as much uniformity as possible in the criteria on which the articles were to be based. In that respect the Commission's text was for the most part admirable, but room for improvement remained. In the case of article 20, it was clear that its content was very similar to that of article 9, and that the introduction of the word "simultaneous" in article 20 would lead to asymmetry in the draft. He considered that in both articles the concept of simultaneity was implicit.

22. Mr. MONNIER (Switzerland) said that his delegation supported the Netherlands amendment and believed that it introduced a degree of precision currently lacking in article 20 and also in article 9. As to the suggestion that the amendment was unnecessary because there was general agreement that the idea of simultaneity was implicit in both articles, he said that it was important to make clear the nature of the agreement achieved to those who would eventually implement the convention. The text should be as specific as possible.

23. His delegation felt that the fact that the debate on an earlier article had been lengthy and detailed should not preclude thorough discussion of a subsequent article which might raise analogous but not identical issues. Views might, after all, change in the course of the Conference in response to statements made by participants. It was in the interests of both the Conference itself and the convention that proposals should be considered solely on their own merits and not those of their sponsors.

24. Mr. ECONOMIDES (Greece) said that the statement made by the representative of Algeria had added a quite new dimension to the debate. The suggestion that there might be cases in which the extinction of the predecessor State's rights was not followed automatically and immediately by the arising of the successor State's rights—that there might be a juridical gap or rupture in the process—was out of keeping with the general feeling in the Committee, as reflected in the debate on article 9, that the process was completely continuous. The suggestion conflicted also with the approach of the International Law Commission itself, which regarded the principle of simultaneity as implicit in the wording of the draft article. It was, in addition, inconsistent with juridical logic; in the process of codification and the progressive development of international law it made no sense to base provisions of a future convention on exceptions, for such provisions must lay down a generally applicable rule. If provision was made for exceptions, it would be necessary to reconsider the whole approach to the topic and, in particular, to provide a rule protecting the rights of third States. Indeed, in his delegation's opinion the introduction of the word "simultaneous" as proposed by the Netherlands would have to be considered also in the context of article 9.

25. He proposed that the Drafting Committee should be invited to make a careful and detailed study of the terms used in article 20, in particular "extinction" and "arising", which had occasioned such heated debate, and endeavour to find other terms having equal juridical value but less charged politically.

26. Mr. THIAM (Senegal) said that his delegation regarded the idea underlying the amendment proposed by the Netherlands as quite sound. It might be a useful clarification both of the provisions of the specific article under consideration and for the purposes of the future interpretation of the convention as a whole.

27. He was surprised that the Committee should once again be debating issues which had been raised by the French amendment to article 9, ultimately rejected. The draft convention must be seen as an indivisible whole. To adopt the Netherlands amendment, however, would be to take a different approach to two virtually identical provisions, thus sowing the seeds of considerable difficulties of interpretation in the future. Article 9 had been adopted unamended and unopposed in the light of the convincing explanations given by the Expert Consultant, who had made it plainly understood that the simultaneity of the extinction and arising of rights was not only perfectly clear in the article but also a logical necessity. It had been on that general understanding that the French amendment had been withdrawn. The Committee should take the same approach to article 20.

28. Mr. RASUL (Pakistan) noted that, in the light of the explanations given by the Expert Consultant, his delegation had understood that the concomitant passing and identical nature of the rights extinguished and arising were implicit in article 9. The Netherlands amendment to article 20, an almost identical provision, was therefore only a drafting change.

29. The Algerian delegation's oral amendment, on the other hand, touched the substance of the article, in that the words "in appropriate cases" would affect the application of article 20 and would reduce its scope. Instead of being applicable to all cases covered by that Part of the convention, the article would become restrictive and selective. In his view, therefore, the Algerian oral amendment was independent of the Netherlands proposal and should be submitted in writing and considered separately.

30. Mr. PIRIS (France) welcomed the Netherlands amendment, which clarified the text in line with the interpretation given both by the International Law Commission and by the Expert Consultant, namely, that it was self-evident that the extinction and arising of rights referred to in article 20 were concomitant and simultaneous. It had appeared from the earlier debate on his delegation's proposed amendments to article 9 that the Committee of the Whole was unanimously in favour of the concept of simultaneity. If that consensus still prevailed, the Netherlands amendment could be adopted. His delegation could then vote in favour of article 20 as amended, on the understanding that the Drafting Committee would be free to find more suitable terms in place of "extinction" and "arising".

31. However, the representative of Algeria had seemed to challenge that consensus. Accordingly, if the Netherlands amendment was rejected, the French delegation could not be content to abstain in the vote on article 20 as it had done in the case of article 9. In the light of the Algerian amendment, it would no longer be possible to regard the absence or presence of the word "simultaneous" as merely a drafting question. He did not interpret the Algerian amendment in the same way as the Greek delegation. In his delegation's view, the Algerian amendment did not provide for an exception but postulated non-simultaneity as the rule and treated cases in which the extinction and arising of rights occurred simultaneously as exceptions. That was a radical substantive change.

32. Consequently, if the Netherlands amendment was rejected, the concept of simultaneity could no longer be regarded as implicit. The French delegation considered the Algerian amendment unacceptable; it continued to believe, like most delegations, that simultaneity existed in all cases without exception. The Netherlands amendment should be incorporated in article 20, and article 9 should in due course be reconsidered with a view to introducing a similar amendment, which would likewise expressly embody the concept of simultaneity.

33. Mr. HOSSAIN (Bangladesh) said that he understood the concerns of those delegations which supported the inclusion of the word "simultaneous". However, since a similar amendment in the case of article 9 had been rejected, and since article 20 as it stood was

fairly satisfactory, he suggested that the Committee should not linger over the question but proceed to a vote on the amendments as soon as possible.

34. Mr. CHO (Republic of Korea) said that he fully understood and accepted the idea that the extinction and arising of rights mentioned in article 20 were simultaneous and believed that the article already implicity embodied that idea. He was inclined to favour retaining the article as it stood, especially for the sake of consistency with article 9, already adopted.

35. Mr. NATHAN (Israel) said that he supported the Netherlands amendment as a necessary clarification of the principle that no break occurred between the extinction of the rights of the predecessor State and the arising of rights for the successor State. Since the withdrawn French amendment to article 9 had been very much wider in scope and more complex than the Netherlands amendment to article 20, its rejection could not be regarded as setting a precedent. The introduction of the word "simultaneous" in article 20 would admittedly mean that that article and article 9 would not be perfectly balanced, but in his opinion that was not in itself a reason for rejecting the Netherlands amendment. As the representative of France had pointed out, the proper course would be to consider the Netherlands amendment on its merits and to review article 9 as appropriate to ensure that the two provisions were in harmony.

36. Mr. LAMAMRA (Algeria) said that he wished to correct the erroneous interpretations of his delegation's oral amendment put forward by the representatives of Greece and France. Although they were mutually contradictory, each had been equally far removed from the true thinking behind the proposal.

37. The purpose of the proposed amendment was certainly not, as the representative of Greece had suggested, to imply that some kind of juridical gap or rupture occurred, even exceptionally, in the passing of rights. On the contrary, the passing of rights was fully continuous, so much so that there might even be concurrent possession of identical rights and identical archives on the part of the two States concerned.

38. He stressed that the true intention of the amendment was to establish absolute simultaneity as the rule and to regard any other situation as irregular. That was the reverse of the construction placed on the Algerian amendment by the representative of France.

39. After a procedural discussion, in which Mr. LAMAMRA (Algeria), Mr. MONNIER (Switzerland), Mr. PIRIS (France), Mr. TEPAVITCHAROV (Bulgaria), Mr. ROSENSTOCK (United States of America) and Mr. ASSI (Lebanon) took part, the CHAIRMAN suggested that a decision on article 20 and the proposed amendments thereto should be deferred pending the circulation of the Algerian delegation's amendment in written form.

It was so decided.

The meeting rose at 1.05 p.m.

22nd meeting

Thursday, 17 March 1983, at 10.15 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 20 (Effects of the passing of State archives) (*concluded*)

1. The CHAIRMAN said that the Committee had completed its consideration of article 20, and he hoped that it could proceed to take a decision on the amendment proposed by the Netherlands (A/CONF.117/C.1/L.33) and on the draft article as a whole.

2. Mr. LAMAMRA (Algeria) said that, as the Committee had relatively little time left in which to finish its work, and taking into account the need to maintain the logical consistency of the draft as a whole, his delegation withdrew the sub-amendment it had submitted orally at the 21st meeting with respect to the Netherlands amendment.

3. Mr. THIAM (Senegal) said that he welcomed the spirit of compromise shown by the delegation of Algeria in withdrawing its sub-amendment. He believed that the withdrawal could be interpreted both as a gesture intended to dispel any fears of a protracted procedural debate and also as an acknowledgement of the clarifications provided in the course of the discussion by the Expert Consultant. He hoped that the Committee would now be in a position to restore the consensus it had achieved in regard to article 9.

4. The CHAIRMAN invited the Committee to vote on the amendment submitted by the Netherlands.

The amendment was rejected by 32 votes to 21, with 8 abstentions.

5. The CHAIRMAN invited the Committee to proceed to a vote on the text of draft article 20 as submitted by the International Law Commission.

Draft article 20, as proposed by the International Law Commission, was adopted by 47 votes to 4, with 13 abstentions, and referred to the Drafting Committee.

6. The CHAIRMAN said that a number of delegations wished to speak in explanation of vote.

7. Mr. MAAS GEESTERANUS (Netherlands) said that he had hoped to be given the opportunity to speak

in explanation of vote before the vote, but that his request for the floor seemed to have been ignored.

8. The fact that his delegation's amendment had been rejected did not convince him that the concept of simultaneity was implicit in article 20. On the contrary, a statement at the previous meeting had shown that at least one delegation believed that the extinction and arising of rights in the case of a succession of States were not coincident in time, and that there might in fact be a gap, or even an overlap, between the two events. Such an interpretation was unacceptable to his delegation.

9. The CHAIRMAN said that he had been under the impression that the representative of the Netherlands had merely wished to add his name to the list of delegations wishing to speak in explanation of vote after the vote. He apologized for the evident misunderstanding.

10. Mr. ECONOMIDES (Greece) said that his delegation had voted in favour of the Netherlands amendment and in favour of the International Law Commission's version of draft article 20 because it felt that, as in the case of article 9, the idea of simultaneity was inherent in the text. The Netherlands amendment had merely reinforced that underlying idea.

11. Mr. RASUL (Pakistan) said that his delegation had abstained in the voting on the Netherlands amendment, which it regarded as essentially a drafting change. It had voted for the text proposed by the International Law Commission on the grounds that it adequately conveyed the notion of the simultaneous extinction and arising of rights upon a succession of States.

12. Mr. MURAKAMI (Japan) said that his delegation had voted in favour of the Netherlands amendment but that he wished to affirm its understanding that the rejection of that amendment did not imply denial of the principle of simultaneity implicit in the International Law Commission's draft, for which it had also voted.

13. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the Netherlands amendment for the reasons it had outlined at the Committee's previous meeting. It had found it necessary to vote against the International Law Commission's wording because serious doubts remained as to whether the concept of simultaneity had indeed been preserved in that version of article 20. In addition, his delegation had general reservations regarding the terminology used by the Commission in the article.

14. Mr. OESTERHELT (Federal Republic of Germany) said that, in view of the discussion of the 21st meeting, and particularly the statement by the representative of Algeria on the interpretation of article 20, his delegation had been prepared to vote against the International Law Commission's version of the article. However, the withdrawal of the Algerian sub-amendment and the helpful statement made by the representative of Senegal had enabled his delegation to abstain in the voting on the Commission's text of the article as a whole. At the same time, his delegation had voted for the Netherlands amendment for the reasons it had given at the previous meeting.

15. Mr. ROSENSTOCK (United States of America) said that his delegation had felt that the notion of simultaneity was a necessary feature of article 20, but that the International Law Commission's text was insufficiently precise. It had thus had no alternative but to vote against the draft as submitted by the Commission.

16. Mr. PÉREZ GIRALDA (Spain) said that the Netherlands amendment would have improved the text of article 20 and that his delegation had therefore voted in its favour. His delegation considered that the idea of simultaneity was still implicit in the text and that, therefore, the wording should be more specific in that respect. In view of the doubts expressed in the discussion, however, his delegation had abstained in the voting on the International Law Commission's draft.

17. Mr. MIKULKA (Czechoslovakia) said that his delegation had voted for the International Law Commission's text and against the Netherlands amendment, which it found superfluous because in its understanding both article 9 and article 20 affirmed the principle of the simultaneity of the extinction and arising of rights upon a succession of States.

18. Mr. PIRIS (France) said that the interpretation of article 20 given by one delegation in its statement at the previous meeting had obliged him to vote against the International Law Commission's draft of the article. There was a broad consensus in the Committee of the Whole that the concept of simultaneity expressed in the Netherlands amendment, for which the French delegation had voted, was implicitly covered in article 20, as it had been in article 9.

19. Mr. NARINTHRANGURA (Thailand) said that the Netherlands amendment would have provided a useful addition to article 20 and would have clarified its scope. His delegations had therefore voted in favour of the amendment.

20. Mrs. PAULI (Switzerland) said that her delegation had voted for the Netherlands amendment and also for the International Law Commission's text of article 20, since, although the Netherlands amendment would have added a useful degree of precision, the idea of simultaneity was in any case implicitly contained in the text of article 20.

21. Mr. LAMAMRA (Algeria) said that his delegation welcomed the adoption of article 20 in the International Law Commission's version, since his delegation's interpretation of that wording coincided on the whole with the views expressed by the Expert Consultant in the context of article 9. He regretted that certain speakers had chosen to misrepresent his delegation's position, which was intended merely to safeguard the rights of successor States in particular cases of succession.

22. Mr. THIAM (Senegal) said that his delegation had abstained in the voting on the Netherlands amendment. While recognizing the spirit which had prompted the amendment, it felt that the International Law Commission's original text, as elucidated by the Expert Consultant, fully conveyed the idea of simultaneity, and that it would be best, in the interests of preserving the balance between the various Parts of the convention, to maintain the consensus achieved on article 9. He added in that connection that his delegation had welcomed the conciliatory and wise gesture of the Algerian delegation in withdrawing its sub-amendment.

New article 19 bis (Passing of State archives)

23. The CHAIRMAN recalled that the Committee had approved a corresponding article in Part II of the draft, namely article 8 *bis*, which had been referred to the Drafting Committee. He invited delegations to comment on the substance of the new article 19 *bis* (A/CONF.117/C.1/L.39) proposed by Algeria.

24. Mr. MEYER LONG (Uruguay) said that his delegation supported the new article, which would be in line with article 8 *bis* as already adopted.

25. Mr. PHAM GIANG (Viet Nam) said that in his delegation's view the adoption of the new article 19 *bis* would necessitate the addition of an analogous provision in Part IV of the draft, and he inquired whether the delegation of Algeria intended to submit such an article for inclusion in that Part. The topic covered by the new article was an important one for newly independent States, but his delegation had reservations concerning the wording chosen, which might prejudice the balance of the convention as a whole.

26. Mrs. THAKORE (India) addressed a similar question to the Algerian delegation.

27. Mr. LAMAMRA (Algeria) said that, in submitting the proposed article 19 *bis*, his delegation had intended to safeguard the logic and consistency of the draft convention. The proposed new article was designed as a parallel to the corresponding provision in Part II, but his delegation had decided that its inclusion was not essential. In the interests of saving time, therefore, it wished to withdraw the proposal.

28. Mr. ROSENSTOCK (United States of America) said that the question of ensuring uniformity in the text of the convention was one best left to the Drafting Committee and that the proposal submitted by Algeria was an important one which should not be allowed simply to lapse. He accordingly suggested that it should be referred to the Drafting Committee.

29. Mr. RASUL (Pakistan) said that his delegation had supported the inclusion of article 8 *bis* in the draft as it provided a general and innocuous rule which would apply to all Parts of the convention. If the proposed new article 19 *bis* was not adopted, his delegation would oppose the inclusion of the corresponding article 8 *bis*.

30. Mr. PIRIS (France) agreed with the representative of the United States that the problems raised by the new article 19 *bis* should be referred to the Drafting Committee which might usefully consider the possibility of combining the provisions of draft articles 8 *bis* and 19 *bis* with a corresponding provision on State debts.

31. Mr. ROSENSTOCK (United States of America) announced that his delegation would formally resubmit as its own proposal the amendment involving the addition of a new article 19 *bis* previously submitted and then withdrawn by Algeria.[1] He recommended that the text of the amendment should be referred to the Drafting Committee without further discussion.

32. Mrs. BOKOR-SZEGÖ (Hungary) said that, if the proposal should once more come before the Committee, members would surely have a right to discuss it if they so desired. To refer it directly to the Drafting Committee would be against the spirit and the letter of the rules of procedure.

33. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation would have been prepared to vote for article 19 *bis*, just as it had voted for article 8 *bis*, because the article gave expression to the concept of continuity inherent in the act of passing of State property and archives. The amendment originally submitted by Algeria and now reintroduced by the United States was in line with the position his delegation had taken from the beginning. He would welcome it if a general provision to that effect were incorporated in the draft, and hoped that the Drafting Committee or the Committee of the Whole would take steps to ensure the harmony and internal consistency of all parts of the draft convention.

34. Mr. MEYER LONG (Uruguay) said that, while supporting the proposal for the insertion of a new article 19 *bis*, he disagreed with the idea that it should be merged with article 8 *bis* and a possible future article 31 *bis*. The division of the draft convention into clearly defined parts should be preserved.

35. Mr. ECONOMIDES (Greece) said that he was in favour of introducing a single unified rule concerning the matter under discussion and reserved the right to submit a proposal to that effect in the light of the recommendations of the working group established to consider the rationalization of the draft convention. For the time being, he supported the amendment just reintroduced by the United States of America as a logical consequence of the adoption of article 8 *bis*.

36. Mr. MIKULKA (Czechoslovakia) said that the subject matter of the amendment should not be regarded as a drafting point but as a question of substance. Paragraphs (1) and (2) of the International Law Commission's general commentary on Part III of the draft convention indicated that State archives constituted a very special case in the context of succession of States and explained in what way they differed from other forms of State property. It would be a mistake to reproduce, purely for the sake of ensuring a formal balance, the rule of article 8 *bis* dealing with State property, in the section devoted to State archives without inquiring whether or not such a rule would be appropriate in that context. Archives represented a specific sub-category of State property. A succession of States in respect of State archives entailed not only the passing of archives of the predecessor State to the successor State but also, in certain cases, gave rise to an obligation on the part of the predecessor State to furnish copies of State archives to the successor State. The proposal now sponsored by the United States overlooked that aspect of the problem and was therefore inappropriate and unacceptable.

37. Mr. PIRIS (France) remarked that in paragraph (1) of its composite commentary to articles 20, 21, 22 and 23, the International Law Commission spoke of a perfect correspondence between the sets of articles relating to State property and State archives, respec-

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[1] The United States amendment was subsequently issued under the symbol A/CONF.117/C.1/L.42.

tively. He reserved the right to propose, at a later stage, the amalgamation of article 8 *bis* and the corresponding articles on State archives and State debts, if such articles were adopted. In response to the remarks made by one delegation, a minor drafting change might be made to the amendment in relation to the text of article 8 *bis*, so that it would end with the words "subject to the conditions and within the limits set forth in the provisions of the articles of this Convention".

38. Mr. MIKULKA (Czechoslovakia) remarked that the part of the commentary cited by the French representative applied to articles 20, 21, 22 and 23, but not to article 19 or to a new article 19 *bis*.

39. Mr. LAMAMRA (Algeria) suggested that, for the sake of clarity, the text of the new United States amendment should be circulated in writing.

40. After a procedural discussion in which Mr. ROSENSTOCK (United States of America), MR. HOSSAIN (Bangladesh) and Mr. LAMAMRA (Algeria) took part, the CHAIRMAN suggested that the consideration of the proposal for a new article 19 *bis* should be defered pending the distribution of the text sponsored by the United States delegation.

It was so decided.

Article 21 (Date of the passing of State archives)

41. Mr. TÜRK (Austria), introducing his delegation's amendment to article 21 (A/CONF.117/C.1/L.26), said that it might legitimately be asked why a similar amendment should not have been proposed in respect of article 10, which contained what appeared to be an identical provision so far as State property was concerned. As pointed out in paragraph (1) of the general commentary to Part III, archives constituted a very special case in the context of the succession of States. The passing of State archives differed from the passing of State property or State debts. Paragraph (2) of the commentary on articles 20, 21, 22 and 23 stated that archives were usually well identified as such and could be transferred immediately. However, as practitioners were well aware, the difficulties involved might be considerable and the risk of delay could not be discounted. That was why his delegation was proposing the addition of a general provision to the effect that the actual transfer of State archives should take place without delay. The reference to "previous specification" was introduced in his delegation's amendment in order to reflect what was, in fact, standard practice in the vast majority of cases, the words "if necessary" being intended to allow for some flexibility in that respect. If, as had been suggested, articles 10, 21 and 33 were eventually amalgamated—a course which the Austrian delegation would welcome—the text of the proposed paragraph 2 of article 21 would have to appear as a separate article in the part of the convention dealing with State archives. For the time being, however, the proposal should be regarded as an amendment to article 21.

42. Mr. ALI (Egypt) announced that an amendment to article 21 would be submitted by his delegation.[2]

43. Mrs. THAKORE (India), after referring to paragraphs (2) and (3) of the commentary to articles 20, 21, 22 and 23, expressed doubts as to the appropriateness of the phrase "unless otherwise agreed or decided" in the context of article 21. First, the phrase tended to weaken the rule of immediate transfer, which was of particular importance in cases where a succession of States was followed shortly by a further succession of States. Secondly, there was a risk that, where no immediate agreement or decision existed, archives might suffer dismemberment, dispersion or destruction. The problem was a serious one and her delegation would prefer the phrase to be deleted.

44. So far as the Austrian delegation's amendment was concerned, she would wish to hear the Expert Consultant's view as to whether that amendment conflicted in any way with the rule of immediate transfer embodied in the existing text of article 21. If it did not, she would support the amendment with the addition of the word "undue" between the words "without" and "delay".

45. Mr. HALTTUNEN (Finland) said that he welcomed the Austrian delegation's amendment, which contained a very essential reference to the prompt transfer of the State archives concerned. Article 21 as it stood did not draw a distinction between the passing of State archives and the actual transfer of the State archives concerned. In practice, a time lag often occurred between the two events, *inter alia* because of the need to specify the State archives or documents concerned. Any slight inconsistency that might result from the adoption of the Austrian amendment could be removed by inserting the words "title to" between the word "of" and the words "State archives" in the text proposed by the International Law Commission, which would become paragraph 1 of article 21. The Expert Consultant's view on that point would be most helpful, but in any event the matter was essentially of a drafting nature and could be referred to the Drafting Committee.

46. Referring to the Greek delegation's proposal relating to articles 10, 21 and 33 (A/CONF.117/C.1/L.4), he remarked that the proposal would avoid unnecessary repetition in the separate Parts of the convention and was therefore to be welcomed, subject, again, to the insertion of the words "title to" between the words "of" and "State property", since in the case of movable State property the passing of title and the actual transfer might occur at different times.

47. Mr. ZSCHIEDRICH (German Democratic Republic) said that his delegation was in favour of article 21 as it stood.

48. Nothing useful would be added to the article by adopting the Austrian delegation's amendment. It was clearly in the interests of the successor State that the actual transfer of the archives should take place without delay. However, although the commentary to the article noted that immediate transfer was feasible on occasion, history showed that a longer period, sometimes years, might elapse because of the special nature of archives. In such circumstances it did not seem necessary to include a special provision making a concern for the interests of the successor State into an obligation, especially as to do so would make it necessary, for the

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[2] Subsequently issued under the symbol A/CONF.117/C.1/L.41.

sake of consistency, to envisage similar additions to the parallel articles on State property and State debts. It was sufficient to establish the principle set forth in article 21 and to leave the States concerned free to negotiate agreed arrangements for the physical transfer of the archives identified as subject to passing.

49. Mr. RASUL (Pakistan) said that his delegation understood article 21 as dealing only with the determination of the date on which the predecessor State's rights to the State archives in question were extinguished and title thereto vested in the successor State. As such it was intimately linked with article 20 but had no bearing on the quite distinct questions of the actual physical transfer of those archives and the possible delay involved. The Austrian delegation's amendment was therefore out of place in article 21 and he would not be able to support it.

50. The representative of India had proposed verbally that the words "unless otherwise agreed or decided" should be deleted. He recalled that that language had been adopted earlier for the parallel article 10 on State property. Further, the apprehensions voiced by the representative of India regarding possible delays in making the transfer of archives were not relevant to the context of article 21, as the agreement referred to related only to the date of the passing of State archives, or the extinction and arising of the rights to such archives, and not to their actual transfer.

51. Mr. MEYER LONG (Uruguay) said that the suggestions made by some delegations regarding the possible amalgamation of certain articles were not appropriate at that stage in the Conference's proceedings. It would not be reasonable to talk of merging or linking articles or establishing parallels and patterns until all elements to be included in the future convention had been agreed and could be viewed as a whole.

52. He suggested that the debate on article 21 should be suspended pending the circulation of the amendment announced by the delegation of Egypt.

53. Mr. ALI (Egypt) said that the amendment his delegation wished to propose for article 21 was identical to that which it had proposed to article 10 (A/CONF.117/C.1/L.17) and which had been adopted, namely, the replacement of the words "unless otherwise agreed or decided" by "unless otherwise agreed by the States concerned or decided by an appropriate international body". The arguments supporting such an amendment were as valid in the case of article 21 as they had been for article 10, since the provisions were in essence identical.

54. Mr. IRA PLANA (Philippines) said that his delegation had no difficulty in endorsing article 21 as it stood; it was well drafted and established a reasonable and acceptable formula.

55. He was also prepared to accept the Austrian delegation's amendment, which would add a useful complementary provision making it clear that the actual transfer of archives was distinct from their passing, but would welcome a fuller explanation of the meaning of the words "previous specification".

56. Mr. THIAM (Senegal) said that he doubted the wisdom of incorporating the new paragraph proposed by Austria into article 21. The actual transfer referred to in that paragraph was an operation quite distinct from the "passing" of State archives provided for in the article as it stood. The date of passing referred to was that on which the archives were considered in law as required to pass to the successor State. That date was quite different from the date of their effective transfer, which could not take place until after certain practical conditions had been met.

57. The Austrian delegation's amendment was therefore inappropriate and the Commission's original article should be retained unamended.

58. Mr. ECONOMIDES (Greece) pointed out that his delegation's proposed amendment to articles 10, 21 and 33, to which reference had been made, had been withdrawn on the understanding that all such identical provisions would be considered together, with a view to their rationalization.

59. He regarded the Austrian delegation's amendment as logical, realistic and useful and his delegation would support it.

60. Mr. HOSSAIN (Bangladesh) said that it did not seem necessary to add the new paragraph 2 proposed by Austria, especially in the light of the explanation of article 21 provided by the Commission in paragraphs (2), (3) and (4) of its commentary.

61. He was happy to endorse article 21 as it stood but was also ready to accept the Egyptian amendment, which would align article 21 with the related provisions of articles 10 and 11, already adopted.

62. Mr. ROSENSTOCK (United States of America) said that he also could accept the Egyptian proposal, which he regarded as a consequential amendment in the light of the adoption of the same language in articles 10 and 11. He thought it should be possible to take action on the proposal without a written text.

63. Mr. NATHAN (Israel) said that the Austrian amendment was both useful and necessary. The Commission, as was clear from its commentary on the article, appeared to take the view that the passing of archives implied the passing of title to those archives, as distinct from their physical transfer. Indeed, it could not be otherwise for practical reasons peculiar to archives which made it difficult to provide for actual physical transfer on the very date of succession. Two situations had to be covered: first, the passing of legal title and, second, the physical transfer of the items concerned. If the Austrian amendment were adopted, the words "title to" would have to be inserted into the existing text of article 21, as recommended by the delegation of Finland.

64. He felt that the words "without delay" were rather too categorical in view of the complex practical arrangements necessarily implied in the physical transfer of archives. The Drafting Committee might be requested to find some more elastic formula, such as "with the least possible delay" or "without undue delay".

65. Mr. MUCHUI (Kenya) said that, as a co-sponsor of the Egyptian delegation's earlier amendment to articles 10 and 11, his delegation strongly favoured maintaining consistency and balance between the various

provisions concerned and therefore fully supported a similar amendment in article 21. In fact, he had thought that that amendment would be made automatically as a consequence of the earlier decision.

66. While appreciating the concerns underlying the Austrian delegation's amendment, he believed that it should be considered in the light of both article 21 and article 20. Article 20 made it clear that the passing referred to in article 21 related to the passing of legal title to State archives from the predecessor to the successor State. After legal title had passed, the actual physical transfer should then, if possible, take place immediately. The Commission's commentary noted that in many cases such immediate transfer was in fact feasible, and no one disputed that every effort should be made to ensure that it was carried out with the least possible delay. However, he questioned whether it was appropriate or even prudent to provide specifically for the timing of that transfer; it would be preferable to leave the two States concerned free to determine appropriate arrangements in the light of circumstances.

67. Mr. PIRIS (France) said that he fully agreed with the intention behind the Austrian delegation's amendment and incidentally behind that of the International Law Commission, as shown in its commentary. It was inevitable that the physical transfer of archives should take a certain time, since it required the prior sorting and identification of the State archives which passed. The Austrian amendment was therefore useful, even if it might be considered that the idea was already implicit in the International Law Commission's draft.

68. His delegation concurred with the representatives of the German Democratic Republic and Israel in considering the term "without delay" too categorical and in preferring a more flexible formula, such as "as soon as possible".

69. Lastly, it supported the amendment proposed by Egypt, in the interests of harmonizing article 21 with other articles of the draft convention. A corresponding change should also be made in article 22.

70. Mr. MEYER LONG (Uruguay) said that he also supported the amendment proposed orally by the representative of Egypt. He felt that, if that amendment was adopted, the Austrian delegation's amendment would no longer be necessary, for the text of article 21 as amended by Egypt would then dispose of the Austrian delegation's preoccupation and leave the parties free to determine the mode and timing of the transfer of archives.

71. Mrs. PAULI (Switzerland) said that her delegation considered the Commission's draft article adequate in itself, but regarded the new paragraph 2 proposed by Austria as a useful complement, as it provided a valuable clarification of the actual process of transfer of archives. Her delegation would therefore support that amendment. It could also accept the Egyptian delegation's proposal.

The meeting rose at 12.20 p.m.

23rd meeting

Friday, 18 March 1983, at 10.05 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

New article 19 bis (Passing of State archives) (*continued*)

1. The CHAIRMAN suggested that, in view of the link existing between the proposed new article 19 *bis* and other articles on the draft, the Committee might save time, as well as giving itself an opportunity for reflection, by deferring a decision on the proposal until it was in a position to consider article 31, the corresponding provision on State debts in Part IV.

2. Mr. MEYER LONG (Uruguay) stressed that his delegation regarded the various Parts of the draft convention as autonomous and independent; even though they necessarily had certain common and parallel features, they might equally well have been drafted as separate conventions. Accordingly, he considered that the Committee was in no way bound to take account of the articles of other Parts when considering the provisions specific to one aspect of the subject matter.

3. Mr. LAMAMRA (Algeria) said that he agreed with the representative of Uruguay that the Parts of the draft convention were conceptually and organically independent of each other; it would be dangerous to attempt to create any artificial link among them. However, he had understood the Chairman's suggestion as relating only to the Committee's method of work and agreed that it would be useful to have further time to study the proposed new article. Rather than waiting until it was in a position to consider article 31, the Committee might postpone a decision on article 19 *bis* until it had completed its consideration of the remainder of the Part relating to State archives, so that the provisions on archives could be referred to the Drafting Committee as a coherent whole.

4. Mr. RASUL (Pakistan) said that he could not concur with the representatives of Algeria and Uruguay in their approach to the draft convention. In his view, the adoption of the new article 8 *bis* in Part I made it logically necessary to insert analogous articles in the following two Parts, and he would oppose the inclusion of any article in one Part which did not have its equivalent in the other Parts.

5. Mr. DELPECH (Argentina) supported the views of the representatives of Uruguay and Algeria. Each Part of the draft convention was independent and hence there was no valid reason for assuming that identical provisions had to be adopted in each.

6. Mr. ROSENSTOCK (United States of America) noted that his delegation's object in resubmitting as its own the earlier proposal for adding a new article 19 *bis* and suggesting that discussion of the article should be deferred for a time, to enable delegations to consider it carefully, had been precisely not to prejudge the question whether it was advisable also to incorporate such a provision in the other Parts of the draft convention. A decision on that point did not follow automatically and should not be taken hastily; it should be considered carefully at the appropriate time and in each distinct context.

7. The CHAIRMAN confirmed that his suggestion concerned purely the Committee's method of work. Although there were inevitably a number of similar and parallel provisions in the various Parts of the draft, because certain aspects of the process of succession were common to all three areas of the subject matter being covered, those areas were none the less distinct and independent and did not necessarily require identical rules.

8. He suggested that the discussion of the proposed new article 19 *bis* should be suspended to give delegations a further opportunity for reflection.

It was so decided.

Article 21 (Date of the passing of State archives) (*concluded*)

9. Mrs. TYCHUS-LAWSON (Nigeria) said that she understood the Austrian delegation's amendment (A/CONF.117/C.1/L.26) as implying that, although title to State archives might pass according to the rule established by article 20, a successor State might not actually take possession of the archives until a somewhat later date. She appreciated the reasons behind such a provision, especially in the light of the International Law Commission's commentary on the article.

10. However, there were certain types of State archives, such as those necessary to the successor State's administration of the territory, which ought to pass to that State immediately. Furthermore, in certain cases of succession of States, in particular those involving newly independent States, the succession would no doubt have been preceded by prolonged negotiations between the parties and, by the date of the succession, those documents which qualified as State archives should have been identified and be ready for immediate transfer to the successor State. Since the article as it stood left the parties concerned free to agree on a mutually convenient date, for the actual passing of the archives, later or, indeed, earlier than the date of succession, her delegation considered the article perfectly satisfactory, subject to the adoption of the amendment proposed by the Egyptian delegation (A/CONF.117/C.1/L.41).

11. Mr. OESTERHELT (Federal Republic of Germany) said that he endorsed the fundamental idea behind the Austrian delegation's amendment. Practice indicated that the technical difficulties involved in transferring State archives to the successor State were rather complex, and he was ready to vote in favour of a rule which made allowance for that fact and provided a practical framework for actual transfer.

12. It would be preferable, however, to include the proposed provision as a separate article, in order to make clear that there were two distinct questions involved, the first being the date of passing, which was settled systematically by the régime established by the convention, and the second concerning the practical arrangements for physical transfer, which was to be settled by the parties in the course of the performance of their obligations under the convention.

13. Mr. WHOMERSLEY (United Kingdom) said that his delegation was in favour of the amendment proposed by Egypt which would bring article 21 into line with articles 10 and 11, as adopted.

14. He could also support the Austrian delegation's amendment, subject to some refinement of drafting, which might be left to the Drafting Committee. For example, the word "physical" would be preferable to "actual" in the proposed paragraph 2. He endorsed the suggestion made by the representatives of India and Israel that a word, perhaps "undue" should be inserted between the words "without" and "delay".

15. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation had no difficulty in accepting the text of article 21 as it stood, whereas it considered the Austrian delegation's amendment as less than constructive for several reasons.

16. First, the question of the physical transfer of State archives lay outside the scope of the draft articles, which rightly did not seek to lay down a general rule for the technical modalities of the transfer, since *de facto* circumstances differed so greatly from case to case that any such rule would be certain to give rise to injustices. For instance, in Part II of the draft there had been no attempt to specify the practical arrangements for the physical transfer of movable property to the successor State. In the case of archives, particularly where a new State possibly lacking the appropriate technical facilities was concerned, there might be every reason for delaying the process. Secondly, the amendment proposed by Austria implied an obligation on the successor State to take delivery of the archives without delay, whereas the predecessor State would be able to rely on the phrase "if necessary upon previous specification" to justify a failure to deliver the archives in question immediately. Lastly, it was necessarily the successor State which would be required to bear the costs of such delay in the transfer of essential archives and any loss or deterioration caused to documentary material as a result of the delay.

17. In the light of those considerations his delegation could not therefore support the Austrian delegation's amendment and favoured adoption of the draft article as it stood.

18. Mr. LAMAMRA (Algeria) said that his delegation would also support the draft article as it stood.

19. While he sympathized with the motives of the Austrian delegation in proposing its amendment, he

endorsed the opposing arguments put forward by the representative of the Islamic Republic of Iran. In addition, he queried the appropriateness of the word "transfer" as used in the proposal, since it did not allow for the possibility that certain archives might in fact be situated in the territory affected by the succession and hence would come into the successor State's immediate possession on the date of succession, together with the State property in which they were held. The word "transfer" implied a removal or relocation, and was applicable only in cases where documents had to be repatriated.

20. His delegation's major reservation concerned the words "previous specification". If that expression referred to the everyday work of archivists, then in the context of the convention it had little meaning. However, if, as his delegation suspected, it was a qualification of the definition of archives provided by articles 19 and 20, it was dangerous in that it might undermine the legal force of those provisions by effectively reducing their scope.

21. His delegation could therefore not support the Austrian delegation's amendment in its present form.

22. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation understood article 21 as laying down a general rule regarding the date of the passing of State archives but not as establishing any guidelines for the actual transfer of those archives; it left the practical arrangements to be agreed between the successor and predecessor States. Indeed, in the absence of such agreement, the transfer would hardly be feasible; because of the unique character of State archives, agreement on their actual transfer was bound to play a predominant role.

23. The Austrian delegation's amendment dealt with the transfer of those archives which had already been identified as State property under article 21 as it stood. His delegation believed that such an addition was not necessary because, once legal title had passed on the date of succession, the physical transfer of the items concerned should in normal circumstances, on the assumption that the parties acted in good faith, be effected immediately or without undue delay. His delegation therefore questioned whether there was any need for an express statement of the obvious. In any case, such a provision was probably outside the scope of the draft convention, the object of which was to codify general rules of international law; the actual physical transfer of archives, although a very important phase in the process, involved simply the practical implementation of those general rules.

24. For that reason, he considered that, if the amendment were to be adopted, the proposed provision should be included in the other Parts of the convention as well, since it was not relevant solely to Part III. If such a provision was finally included, it should be drafted in very general terms; as it stood, the use of the expression "if necessary upon previous specification" introduced an element of subjective assessment which should be better avoided, for it offered the predecessor State a pretext for deferring the transfer of archives unnecessarily.

25. Referring to the amendment proposed by Egypt, he said that the amendment raised a problem of concordance with other similar articles of the draft convention. He considered accordingly that it might be left to the discretion of the Drafting Committee, especially since he gathered that such was the understanding in the Committee of the Whole.

26. Mr. ABED (Tunisia) said that, in the light of the comments made during the discussion on article 21, his delegation felt confident that the article provided the necessary criterion of immediacy with respect to the passing of State archives. In addition, the article left the parties free to derogate by agreement from the principle laid down. The article was sufficiently flexible not to call for any amendment, but his delegation felt that the Egyptian proposal introduced a concept which had been introduced into article 11 as adopted and which might usefully also be introduced into article 21. It might happen, for example, that an international body, in adjudicating in a case referred to it, had to derogate from the principle that State archives should pass immediately. He suggested that the article, together with the Egyptian amendment, should be referred to the Drafting Committee with a view to harmonizing articles 11 and 21.

27. Mrs. OLIVEROS (Argentina) said that, while appreciating the good intentions behind the amendment proposed by Austria, her delegation felt that the particular concern it reflected was implicitly dealt with in the article as it stood. As was pointed out in the commentary to the article, there were frequent cases in which detailed and time-consuming work on the sorting of archives was required, a contingency which was provided for by the phrase "unless otherwise agreed or decided".

28. The Egyptian delegation's amendment was a positive contribution to the clarity of article 21 in that it distinguished between the actions of agreeing and deciding in the particular context of the article under discussion.

29. The Committee should however exercise caution in drawing parallels between articles in different Parts of the draft convention, since such parallels could be misleading.

30. Mr. KADIRI (Morocco) said that it was essential to affirm that State archives passed at the date of the succession, even if the schedules for such operations as reproduction of documents were agreed between the States parties to the succession. Even if there were delays, the successor State became the owner of the archives from the date of the succession. Should a further succession of States occur prior to the actual transfer of the archives, it was important to establish that those archives were excluded from the second succession. Article 21 was acceptable as it stood in that it would avoid difficulties arising from a second succession.

31. His delegation welcomed the explanations provided by the delegation of Austria on behalf of its amendment, but would not be able to support the amendment itself, which by using the phrase "if necessary upon previous specification" left the door open to disingenuous delaying tactics on the part of the pre-

decessor State. On the other hand, the Egyptian amendment was acceptable in that it spelt out an idea implied in paragraph (4) of the commentary.

32. Mr. SUCHARIPA (Austria) thanked delegations for their support for his proposed amendment. He noted that almost all delegations which had participated in the discussion on article 21 seemed to be of the view that the passing of the title to State archives and the actual transfer of those archives need not necessarily take place at the same time. His delegation had not initially been convinced that that view had the implicit support of article 21 as drafted by the Commission, but it had gathered from the discussion that there was a general understanding that the possibility of such a temporal discrepancy was not excluded by the article. His delegation accordingly withdrew its amendment.

33. Mr. BEDJAOUI (Expert Consultant) said that it was his impression from the discussion on article 21 that there was a large measure of support for the article as drafted by the International Law Commission. The commentary on the article made it clear that in practice there had been many occasions when States had dealt with the problem of a gap in time between the passing of State archives and their transfer by establishing time limits. The Egyptian amendment was of considerable value in that context and it should prove possible to incorporate it in the article. The amendment proposed by Austria reflected a legitimate concern but he felt that its substance was implicit in the International Law Commission's wording.

34. The practical problems involved in the transfer of archives were complex and difficult to solve, sometimes for technical reasons. In some cases, particularly those of a dissolution of States, time was required in order to sort out the archives. On the other hand, delays could occur when a predecessor State, perhaps for political reasons, might wish to hold on to archives. The purpose of the Austrian amendment was evidently to amplify the rules governing the passing of archives in cases where there might be technical reasons for a delay. The article made it quite clear, however, that the successor State became the owner of the State archives at the date of succession. In the event of a second or further succession of States, it was essential to determine what archives had legally passed under the previous succession.

35. Reference had been made to the possibility of the loss or deterioration of State archives occurring before they were actually transferred: responsibility in that case self-evidently rested with the predecessor State, whereas if the loss or deterioration occurred after the archives passed to the successor State the responsibility clearly lay with that State. It was not unknown for predecessor States to impose conditions for the transfer of archives on the grounds that the successor State did not have proper facilities or trained staff to ensure their safekeeping. Under article 21 such considerations were not permitted: any loss or deterioration should be the concern solely of the successor State, and could not be pleaded as grounds for justifying a refusal to transfer the archives.

36. The Austrian amendment had raised a valid point in the case of a dissolution of States; archives might be dispersed or in disarray and time might be needed to restore them to order. He pointed out that in State practice what happened quite usually was that a joint committee composed of representatives of both the predecessor and the successor State was set up in order to locate and identify the archives, to determine what should pass, and to supervise the transfer itself. The International Law Commission had borne those considerations in mind when drafting article 21, which, he felt, left sufficient latitude in that respect. Article 21 specifically stated that the date on which a successor State acquired ownership of the archives was the date of succession, but recognized that agreement between the predecessor and successor States might be required if technical reasons necessitated a delay in the actual transfer of the archives.

37. The CHAIRMAN said that it was his understanding that the Committee wished to adopt the amendment proposed by Egypt (A/CONF.117/C.1/L.41) without a vote.

The Egyptian delegation's amendment was adopted without a vote.

38. The CHAIRMAN said that, if he heard no objection, he would assume that the Committee wished to adopt article 21, as amended by Egypt, without a vote.

Article 21, as amended, was adopted and referred to the Drafting Committee.

39. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had joined in the consensus on article 21 on the understanding that the phrase "or decided by an appropriate international body" in the amended text just adopted should be taken as referring to decisions binding upon the parties to the succession.

40. Mrs. de MARGERIE (France) said that her delegation had been able to vote in favour of article 21 as contained in the draft convention. In fact, the discussion on article 21 had seemed to indicate that there was consensus within the Committee for the idea spelt out in the Austrian amendment, which affirmed that the passing of rights and the physical transfer of State archives constituted two stages of the same process, and that in most instances they did not occur at one and the same time.

Article 22 (Passing of State archives without compensation)

41. Mr. HAWAS (Egypt) said that his delegation's amendment to articles 10, 11 and 21 (A/CONF.117/C.1/L.17, L.6 and L.41, respectively) also applied to article 22; the words "unless otherwise agreed or decided" should be replaced by "unless otherwise agreed by the States concerned or decided by an appropriate international body".

42. Mr. HOSSAIN (Bangladesh) stressed that the various Parts of the convention should be internally consistent and suggested that article 22 and, at a later stage, article 33 should be referred to the Drafting Committee with a request for the incorporation of the same wording as that adopted for articles 10 and 11.

43. Mr. MEYER LONG (Uruguay) said that he supported the Egyptian delegation's amendment but did

not think that any text should be referred to the Drafting Committee until it had been adopted by the Committee of the Whole.

44. Mr. PHAM GIANG (Viet Nam) expressed support for the International Law Commisison's text as amended by Egypt.

45. Mr. YÉPEZ (Venezuela) also supported the Egyptian amendment and submitted an oral amendment of his own to the effect that the words "Subject to the provisions of the article in the present Part and" at the beginning of the article should be deleted. In his opinion, the phrase was superfluous and might be understood to provide for the possibility of derogation from the non-compensation principle. He said that owing to his late arrival at the Conference he had been unable to make the same suggestion in connection with article 11.

46. Mr. PIRIS (France) said that he hesitated to endorse the oral amendment just made by the representative of Venezuela. As a matter of fact, the phrase appeared in article 11, which was the exact counterpart of article 22 and which had been adopted by the Committee. Without a cogent reason to the contrary, his delegation believed that the interests of harmony should prevail.

47. Mr. ROSENSTOCK (United States of America) suggested that the point raised by the Venezuelan oral amendment should be referred to the Drafting Committee.

48. Mr. HOSSAIN (Bangladesh) said that, for the same reasons as those given by the French representative, he was unable to support the amendment suggested by Venezuela.

49. Mr. PÉREZ GIRALDA (Spain) said that the phrase in question made sense when it was used in article 11, where it referred to article 16, paragraph 3. On the other hand, it was not clear what it meant in article 22.

50. Mr. MEYER LONG (Uruguay) and Mr. OESTERHELT (Federal Republic of Germany) said that some elucidation of the matter by the Expert Consultant would be helpful.

51. Mr. BEDJAOUI (Expert Consultant) said that, as in the case of article 11, the phrase "Subject to the provisions of the articles in the present Part" was intended to signify that the article should be read without prejudice to other provisions in the same Part of the draft convention. In the case of article 11, the relevant other provisions were those in articles 16, paragraph 4, and 17, paragraph 4; in the case of article 22 they were in article 29, paragraph 2. In both cases, the principle of equitable compensation might apply.

52. Mr. YÉPEZ (Venezuela) said that, in the light of the Expert Consultant's explanation and of views expressed by members of the Committee, he withdrew his oral amendment.

53. The CHAIRMAN suggested that, in the absence of objection, the Egyptian delegation's oral amendment to article 22, which was identical with its amendment to article 21 (A/CONF.117/C.1/L.41), should be considered adopted.

It was so decided.

Article 22, as amended, was adopted and referred to the Drafting Committee.

54. Mr. PÉREZ GIRALDA (Spain) hoped that the Drafting Committee would look into the possibility of deleting the phrase "Subject to the provisions of the articles in the present Part and" at the beginning of article 22, since the Expert Consultant's statement had confirmed that the Venezuelan delegation was correct and although the latter had withdrawn its amendment to that effect.

Article 23 (Absence of effect of a succession of States on the archives of a third State)

55. Mr. MAAS GEESTERANUS (Netherlands) proposed that in article 23 the word "State" which appeared after the word "affect" should be deleted. According to the definition in article 19, the term "State archives" was reserved, for the purposes of the draft convention, for archives owned by the predecessor State. To speak of State archives owned by a third State was therefore an inconsistency which had no doubt crept into the International Law Commission's text inadvertently. The deletion would, furthermore, bring the text of the article into line with its title.

56. Mr. HOSSAIN (Bangladesh) drew attention to the correspondence between article 23 and article 12 and expressed a preference for leaving the text of article 23 unchanged.

57. Mr. SUCHARITKUL (Thailand) said that the oral amendment of the Netherlands was perfectly justified and should be adopted precisely for the sake or preserving harmony between article 23 and article 12, in which the words "property, rights and interests" were not preceded by the word "State".

58. Mr. ECONOMIDES (Greece) suggested that the words "as such" should be deleted from the opening passage of article 23. In his opinion, the effect of article 23 would remain the same whether or not the words "as such" were maintained; however, their inclusion could give rise to arguments *a contrario* leading to incorrect conclusions.

59. Mr. MUCHUI (Kenya) associated himself with the representative of Thailand in supporting the oral amendment proposed by the Netherlands.

60. Mr. THIAM (Senegal) pointed out that the Working Group set up to consider article 19 might produce a text which had repercussions on the wording of article 23. He suggested that a decision on the article should be deferred pending the conclusion of the working group's work.

61. Mr. BEDJAOUI (Expert Consultant) said that in fact the International Law Commission had not been able to define either the idea of "property" or of "State property" but had defined State property as "State property of the predecessor State", the only property likely to be affected by a succession of States. As a result, provisions concerning State property belonging to a third State or to the successor State appeared to have no place in the draft convention. Article 12 avoided the difficulty by speaking of "property, rights and interests", rather than of "State property", of a

third State. It had not been possible to avoid the difficulty in the case of article 23, and the result was the inconsistency of language to which the Netherlands representative had rightly drawn attention. The problem could be solved either by deleting the word "State" before the word "archives", as suggested by the Netherlands, or by employing part of the text which the Working Group on article 19 was expected to recommend.

62. Mr. MURAKAMI (Japan) said that his delegation understood that article 23, like article 12, was a provision of a declaratory nature, that it could not, therefore, be the basis of an argument *a contrario* and that it in no way affected State archives not covered by the succession of States.

63. Mr. PIRIS (France) was of the opinion that the article should be referred to the Drafting Committee or that a decision should be taken at that stage to make the body of the article consistent with its title by deleting the word "State" before "archives" in the opening passage. The French delegation further suggested that the words "situated in the territory of the predecessor State" should be deleted since it was clear that the whereabouts of archives owned by a third State were immaterial for the purposes of the article. Such a deletion would be a purely drafting change.

64. Mr. LAMAMRA (Algeria) said that in the interests of speedy progress his delegation would have no objection to the article being referred to the Drafting Committee. It was, however, in favour of retaining the words "as such", since it considered that their deletion might affect substance.

65. Mr. KADIRI (Morocco) said that in his delegation's opinion article 23 was in the nature of a saving clause to protect the interests of a third State. He stressed that articles 12 and 23 codified a fundamental principle of international law concerning the effect of a succession of States.

66. His delegation considered that the words "as such" and the words "situated in the territory of the predecessor State" should stand. The third State might, for some reason, have entrusted certain of its archives to the predecessor State for safekeeping or for restoration and repair, or for display in a cultural exhibition. Moreover, in the case of a double succession, the successor State in the first succession would in effect be a "third State" in the second succession, and its archives located in the predecessor State's territory and not yet transferred should not be affected. In the light of those considerations, his delegation felt that the words in question should stand.

67. The Moroccan delegation endorsed the suggestion made by the delegation of Senegal for ensuring consistency between articles 19 and 23 and agreed that article 23 should be referred to the Drafting Committee.

68. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation considered article 23, like article 12, as being declaratory of a general principle of international law and that consequently no argument *a contrario* might be inferred from it.

69. Ms. LUHULIMA (Indonesia) said that her delegation shared the view of the Netherlands delegation that the word "State" in the opening passage of article 23 was misleading and should be deleted. However, it could not accept the suggestion made by the French delegation that the words "situated in the territory of the predecessor State" should be deleted, for without those words article 23 would lose any connection with the subject matter of the draft convention.

70. Mr. THIAM (Senegal) considered that the words "situated in the territory of the predecessor State" were in their proper place in article 23 and that the International Law Commission had been quite correct in providing the safeguard which those words implied.

71. Mr. ECONOMIDES (Greece), in reply to a question by the CHAIRMAN, said that his delegation was still of the opinion that the words "as such" introduced an element extraneous to the topic of succession of States. However, if during discussion it became clear that the trend was to oppose his delegation's suggestion that those words should be omitted, it would be prepared to withdraw the suggestion.

72. Mr. PIRIS (France), also in reply to the CHAIRMAN, repeated that his suggestion for the deletion of the words "situated in the territory of the predecessor State" was a purely drafting suggestion and stated the obvious. His delegation understood article 23 to be declaratory of a general principle of international law and that therefore an argument *a contrario* could not be justified. His delegation would not therefore insist on its drafting amendment.

73. Mrs. TYCHUS-LAWSON (Nigeria) said that the words "situated in the territory of the predecessor State" were very important in the context of article 23. In a case where archives of a third State were not situated in the territory in question, that provision would not of course operate.

74. In the context of the article under consideration, and possibly elsewhere, a problem relating to the definition of "predecessor State" was likely to arise. The predecessor State might be considered as either the country which had been in effective control of the affairs of the territory concerned prior to succession or as the authority responsible for the administration of the territory itself at the time. In the first case, the archives concerned might not in effect be situated in the territory, and in the second case article 23 would relate only to archives physically situated in the territory. Her delegation was therefore of the opinion that it would be appropriate to replace the words "situated in the territory of the predecessor State" by "situated in the territory to which the succession of States relates", which would clarify the matter and which would at the same time accord with the intention expressed in the International Law Commission's commentary.

75. Mr. MUCHUI (Kenya) said that there might indeed be cases in which it was possible that "territory of the predecessor State" might not necessarily be synonymous with the territory affected by the succession. Clarification was therefore required. For that reason his delegation welcomed the point made by the

delegation of Nigeria and believed that the wording it had suggested might resolve the matter.

76. Mr. HAWAS (Egypt) said that his delegation had considered that article 12, the terms of which had a bearing on the drafting of article 23, was unnecessary but in deference to the general sentiment had been willing to include it in the draft. Consequently, in the case of article 23, it considered that the words "situated in the territory of the predecessor State" must be included since they were in effect the *raison d'être* for the article. As regards the words "as such", he said his delegation had fully appreciated the explanation given by the Expert Consultant at the Committee's 5th meeting in connection with article 12, and for that reason found that they were equally appropriate in article 23.

77. Mr. HOSSAIN (Bangladesh) suggested that in the interests of clarity it might be desirable to consider and decide on each proposal and suggestion made in relation to article 23 separately, one after the other.

78. Mr. ROSENSTOCK (United States of America) said that, for the sake of speedy progress in the Committee of the Whole, it was advisable to refer proposals to the Drafting Committee at that stage and, if necessary, to give consideration to any points of substance which might arise subsequently.

The meeting rose at 12.55 p.m.

24th meeting

Friday, 18 March 1983, at 3.10 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

New article 23 bis (Preservation of rights in connection with a succession of States in respect of State archives)

1. Mr. BERNHARD (Denmark), introducing the proposal in document A/CONF.117/C.1/L.28, said that the purpose of that proposal was to take account of certain important questions which were not covered in the draft articles proposed by the International Law Commission. In almost all cases of succession, a division of State archives occurred, which could affect individuals, both natural and juridical, in the States concerned. Such could be the case either because the privacy and personal security of individuals could be affected by the treatment of information contained in the archives, or because an individual or institution had an obvious interest in access to archives, for example for research or study purposes.

2. Subparagraph (*a*) of the proposed new article was inspired by generally accepted human rights concepts, particularly those set forth in the 1966 International Covenant on Civil and Political Rights.[1] With regard to subparagraph (*b*), he noted that most States had rules governing access to State archives, mainly designed to set time limits and to protect State security and the privacy of individuals. The rights referred to in subparagraph (*b*) were not to be construed as absolute. The aim had been to accord a reasonable and customary measure of rights to the individuals concerned.

3. The effect of the division of State archives was usually a matter of interest only to the two States directly involved, a fact recognized by the reference to non-discrimination in the introductory part of the proposed article. The rights referred to in the proposed article were, however, by practice and analogy with international human rights principles, often accorded also to nationals of third States. For that reason, no reference had been made to nationality. He trusted that the proposal in document A/CONF.117/C.1/L.28, which should be of common interest, would meet with broad support. Its sponsors were of course flexible as to the final wording of the proposed article.

4. Mr. SHASH (Egypt) asked what was meant by the preservation of rights; what were the rights in question, who decided whether or not they were applicable, and why had reference not been made to other important rights?

5. Mr. BERNHARD (Denmark) replied that the rights concerned were, on the one hand, the right of individuals, either natural or juridical, to protection against, for example, the publication of material that could infringe their privacy, and, on the other, the right of persons or institutions, in either State, to have access to material in which they had a legitimate interest. Those rights had been singled out as being the most relevant to the matter under consideration, namely the division of State archives. A decision concerning access to State archives would be made in accordance with the internal law of the State concerned; the purpose of the amendment was to ensure that certain minimum rights, which were customary in many countries and were included in many bilateral agreements, would be protected under such a decision.

6. Mr. RASUL (Pakistan) was not convinced that the proposed new article was necessary; article 6 proposed by the International Law Commission already dealt with the rights and obligations of natural or juridical persons. The draft articles as a whole were otherwise concerned with the rights and obligations of States, not those of individuals. He could not see why such a major departure from the approach of the International Law

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[1] General Assembly resolution 2200A (XXI), annex.

Commission was being proposed in respect of one particular aspect of State succession.

7. Mr. POEGGEL (German Democratic Republic) said that his delegation had no quarrel with the idea behind the proposed new article, which was consistent with his own country's internal law. He believed, however, that the substance of the proposed article fell completely outside the scope of the draft convention. The important problems raised by the proposed article should be regulated first and foremost through the internal legislation of each State; another international instrument dealing with the rights of individuals could, if necessary, be drawn up later.

8. Mr. TÜRK (Austria) said that the sponsors of the proposed new article 23 *bis* had felt that there was a particular need to make specific reference to certain rights in connection with the effects of State succession on State archives. The article was designed to protect natural or juridical persons against discrimination in respect of their privacy or their legitimate right of access. It was particularly important that right of access should be ensured; a succession of States should not prejudice the position of the international scientific community. The proposal should be viewed as being in the general interest.

9. Mr. EVANS (Observer for the United Nations Educational, Scientific and Cultural Organization) said that State archives were a unique type of State property. Apart from the question of the right of the international community to have access to learning, it was important to remember that State archives frequently established the legal identity and rights of individuals. If generally recognized principles of access were ignored, such identity and rights would be jeopardized.

10. Mr. NATHAN (Israel) said that his delegation could support the proposal in document A/CONF.117/C.1/L.28, which had the merit of defining certain basic human rights that should not be overridden by the fact of State succession. It was true that article 6 of the draft articles was also relevant, but that article was a provision of a general nature whereas the proposed new article was designed to safeguard certain specific rights.

11. Mr. HOSSAIN (Bangladesh) said that, while his delegation appreciated the idea underlying the proposed new article 23 *bis*, it considered it a matter to be dealt with by the internal legislation of States. He was also concerned at the reference to certain rights, to the exclusion of others, and wondered what the relationship would be between the proposed new article and article 6.

12. Mr. LEITE (Portugal) said that his delegation believed the proposed new article 23 *bis* dealt with a matter of great importance. It therefore supported the proposal.

13. Mr. RASUL (Pakistan) asked whether it was the sponsors' understanding that an individual's right to

15. Mr. SHASH (Egypt) said that, notwithstanding the proposed new article's laudable objective, his delegation would have difficulty in approving it. He believed that article 6, which was a blanket provision applicable to the draft convention as a whole, was sufficient to meet the concern expressed by the sponsor. The proposed new article could present problems of application. First, there might be a conflict between the rights specified in subparagraph (*a*) on the one hand and in subparagraph (*b*) on the other. Secondly, by attempting to specify certain rights, one always ran the risk of omitting other important matters.

16. Mr. ABED (Tunisia) questioned whether the amendment was appropriate: it appeared to stray beyond the scope of the draft convention into the area of the sovereignty of States. The title of the proposed new article was vague: it referred to the preservation of rights, but it was not clear what those rights were. The introductory part of the article obliged the States concerned to respect certain matters: he wondered whether that meant that certain preconditions would be imposed on the successor State which was to receive the archives. The inability of a State, for technical reasons, to fulfill its obligation to transfer certain archives could thus have a suspensive effect on the transfer of all archives. Lastly, subparagraph (*b*) of the proposed new article seemed to imply absolute freedom of access: in most countries, State security considerations would necessitate some restrictions on access to State archives, particularly very recent ones.

17. Mr. ROSENSTOCK (United States of America) expressed the hope that the present concern with relevance would apply equally in the case of other provisions of the draft convention.

18. Many of the problems which had been raised in connection with the proposed new article 23 *bis* were puzzling: the article was designed to remove certain existing impediments to the orderly transfer of State archives, not to create new obstacles. The proposal referred to the preservation of rights which thus presumably already existed. Inasmuch as it sought to facilitate the purposes of the draft convention, the proposed new article could scarcely be more relevant.

19. Mr. WHOMERSLEY (United Kingdom) said that his delegation fully supported the proposal under consideration. The point made in subparagraph (*a*) of the proposed new article was a useful one which reflected normal practice in such matters. With regard to subparagraph (*b*), his delegation believed access to archives to be an important and necessary principle which should not in any way be abridged in the event of a succession of States.

20. It had been argued that the substance of the provision was outside the scope of the draft convention. His delegation could not agree with that view: it was important to specify that State succession did not affect the rights mentioned in the draft article. Those rights

of State succession. The State concerned should have the right to decide in such matters. His delegation was therefore unable to support the proposal.

22. Mr. BA (Mauritania) said that his delegation could not support the proposed new article 23 *bis*, because that provision challenged the rights of the States concerned to define and apply their own internal law. There was, moreover, a potential contradiction between subparagraph (*a*) and subparagraph (*b*): the right to privacy could jeopardize the right to access. The inclusion of a new article in the draft convention would only raise problems; article 6 was in his delegation's view entirely sufficient.

23. Mr. OESTERHELT (Federal Republic of Germany) said that the proposed new article 23 *bis* would not affect the actual passing of archives to successor States. It would impose an obligation on the successor State which he did not consider to be outside the scope of the present draft convention. It was true that the convention was generally restricted to the immediate effects of the passing of title in respect of State property, archives and debts. However, in the case of State archives, the draft convention imposed certain obligations on the States involved which applied after the date of succession. For example, the predecessor State had to provide evidence from State archives in certain cases and also to make available appropriate reproductions. Therefore, in view of the wide support which the principles enunciated in the proposed new article enjoyed, it would seem appropriate to include a provision of that type in the draft convention.

24. Mr. MUCHUI (Kenya) said that the proposed article 23 *bis* enunciated important principles which any State might be expected to respect. However, if its effect would be that, before certain types of archives were passed, the predecessor State could expect the successor State to give a guarantee with regard to those principles and demand proof of the latter State's intention to honour it, then the article bordered on infringement of the sovereignty of the successor State. The Kenyan delegation was therefore unable to support the proposed article.

25. Mr. YÉPEZ (Venezuela) said he did not doubt the good intentions of the sponsors of the proposed new article, but that text was an unnecessary addition to the draft convention since the safeguarding of the principles to which it referred clearly fell within the province of the internal law of the State concerned. Moreover, the new article appeared to impose obligations only on the successor State. His delegation could not therefore support its inclusion in the draft convention.

26. Mr. BERNHARD (Denmark), speaking on behalf of the sponsors of the proposed article 23 *bis*, said that some of the criticism which had been voiced might be due to drafting problems. There was no intention to impose an obligation only on the successor State or to impede the passing of State archives. On the contrary, which were retained in the predecessor State. Article 6 was admittedly of relevance but it was merely a safeguard clause providing that the convention could not be interpreted in such a manner as to prejudice the rights to which it referred.

27. Mr. LAMAMRA (Algeria) said that he shared the objections to article 23 *bis* which had already been expressed. However commendable its aim, the new draft article did not fall within the scope of the draft convention, whose purpose was to codify the effects of a succession of States in respect of the rights and obligations of predecessor, successor and third States. The individual rights referred to in subparagraph (*a*) of article 23 *bis* were set out in national constitutions. Those mentioned in subparagraph (*b*) would be exercised in conformity with the internal law of the State concerned, which would impose such limits as were warranted by the need to safeguard individual rights to personal security, and by other considerations, such as State security. In his view, article 6 dealt effectively with the questions referred to in article 23 *bis*.

28. Mr. IRA PLANA (Philippines) said it was necessary to bear in mind that the principal objective of the draft articles under discussion was the orderly and speedy transfer of State archives. Once that had taken place, the provisions of article 6 would apply in respect of natural or juridical persons. There was therefore no compelling necessity to insert the proposed new article in the draft convention.

29. Mr. PIRIS (France) said that one of the concerns of the sponsors of the proposal in document A/CONF.117/C.1/L.28 had been to avoid the possibility of conflict between the draft convention under consideration and the International Covenant on Civil and Political Rights, particularly article 9, paragraph 1, and article 17, paragraph 1, thereof. The question dealt with in the proposed new article was a matter which concerned both the predecessor and the successor State and no provision in Part III could derogate from the obligations of both States to uphold the rights of individuals. He had noted the view expressed that the matter was already covered by article 6 but, in view of the fundamental importance of the principles concerned—particularly the right to life, which his delegation regarded as sacred—some clarification was desirable.

30. Mr. MIKULKA (Czechoslovakia) said that the matter dealt with in the proposed article 23 *bis* was primarily the concern of the sovereign successor State. The draft article referred to particular aspects of a broader question—the rights of individuals in relation to the succession of States—which had not been studied by the International Law Commission. It was therefore not appropriate to include the proposed new article in the draft convention.

31. Mr. ECONOMIDES (Greece) considered that a provision along the lines of the proposed new article 23

the appropriate measures to be left to the State concerned. The two subparagraphs in the article were not in his view incompatible. Subparagraph (*a*) dealt with the confidentiality of information harmful to individuals, whereas subparagraph (*b*) dealt with access to archives for legitimate reasons not affecting the security of individuals or of the State, naturally in accordance with the internal law of the State concerned. Within the framework of the succession of States, obligations in regard to such matters were incumbent on both the predecessor State and the successor State. Article 6 did not provide protection in the specific cases covered by the proposed article 23 *bis*.

32. Mr. KOLOMA (Mozambique) said it seemed to his delegation that the proposed new article 23 *bis* would mean a prolongation of the rights of the predecessor State in respect of archives. That was contrary to article 20 which provided for extinction of such rights. His delegation was therefore unable to support the proposal to insert the article in the draft convention.

33. Mr. BEDJAOUI (Expert Consultant) said that the purpose of the proposed article 23 *bis* was to deal with a matter whose importance everyone acknowledged. At present, however, subparagraphs (*a*) and (*b*) of the article referred to the rights of individuals and not to those of States. The International Law Commission had not had the mandate to deal with the problem of the rights of individuals in the succession of States; it had had neither the mandate nor the time to draft a parallel convention dealing with that aspect of such succession. It had felt that it could not do more than include article 6, drafted in very general terms, among the general provisions, as a safeguard.

34. Regarding the text of the proposed new article, he observed that subparagraph (*a*) raised problems in respect of potential or pending legal proceedings which the International Law Commission had been reluctant to tackle and which could be dealt with more appropriately in some other framework. Subparagraph (*b*) referred to "rights concerning access". He wondered what other rights, besides the right of access itself, were implied within the context of the convention. The proposed new article's use of the word "preservation" brought up the question of acquired rights. But the successor State had not succeeded to the legislation of the predecessor State, which was extinguished in respect of the State archives passed in accordance with article 20. The internal law of the successor State would regulate subsequent right of access. It had been stated that article 23 *bis* would apply particularly to cases where archives were divided. However, that idea was nowhere explicit in the text. But in any case that did not alter the relevance of the other points he had mentioned.

35. The CHAIRMAN put to the vote the proposed new article 23 *bis* (A/CONF.117/C.1/L.28).

The proposed new article 23 bis *was rejected by 41 votes to 20 with 7 abstentions.*

to safeguard—just as the predecessor State had done—the highly important principle of the individual's right to privacy and personal security.

37. Mr. SHASH (Egypt) said that, although agreeing with the aims of its sponsors, he had voted against the proposed article 23 *bis*, because the draft convention under consideration dealt with the rights and duties of the predecessor and successor States.

38. Mr. PAREDES (Ecuador) said that his delegation had voted in favour of the proposed article 23 *bis*. In its view there was no harm in conforming explicitly what might be implicitly understood from article 6. That position was consistent with the general approach adopted by Ecuador.

39. Mr. BARTSCH (Chile) said that he had voted against the proposed article 23 *bis* because it was outside the scope of the draft convention.

40. Mr. AL-KHASAWNEH (Jordan) said that he had voted against the proposed article 23 *bis* because, in view of article 6, it was superfluous, and because there was no reason to lay special emphasis on the rights of individuals in Part III of the draft convention. That might lead to arguments *a contrario* in respect of the other Parts. Finally, the proposed new article went beyond the scope of the draft convention.

41. Mr. ENAYAT (Islamic Republic of Iran) said that he had abstained in the vote on the proposed article 23 *bis*. That provision embodied commendable principles which were guaranteed in the Iranian constitution, but he appreciated the fears expressed by some delegations that the article might have undesirable consequences in the future.

42. Mr. KADIRI (Morocco) said that while his delegation appreciated the initiative of the sponsors of the proposed new article, it had voted against the article because the matter it dealt with was covered by the safeguard clause in article 6 and because the question involved did not fall within the scope of the draft convention. Furthermore, the article appeared to conflict with the principle of non-intervention in the internal affairs of the successor State, and could give rise to conflict between the draft convention and the International Covenant on Civil and Political Rights. It might also raise problems in connection with acquired rights in respect of archives.

43. Mr. YÉPEZ (Venezuela) said that although his country was a strong defender of civil rights and was a signatory of the International Covenants on Human Rights, his delegation had voted against the proposed article 23 *bis* because in its view that provision had no place in the present draft convention.

44. Mr. CHO (Republic of Korea) said that, while his delegation fully appreciated the aims of the sponsors of the proposal, it had voted against article 23 *bis* because, in its view, article 6 effectively met their concerns.

46. Mr. MIKULKA (Czechoslovakia) said that his delegation had voted against the proposed new article because it went beyond the scope of the convention.

47. Mr. A. BIN DAAR (United Arab Emirates) said that, while sympathizing with the ideas contained in the proposed article, his delegation, too, had voted against it because it went beyond the scope of the draft convention under consideration.

48. Mr. SUCHARITKUL (Thailand) said that, while his delegation appreciated the sponsors' ideas and the principles underlying their proposed new article, it had abstained in the vote because the question of preservation of the right to privacy and personal security and the right of access to State archives was covered by article 6.

49. The CHAIRMAN noted that the Committee of the Whole had concluded its consideration of the proposed new article 23 *bis*.

Article 23 (Absence of effect of a succession of States on the archives of a third State) (*continued*)

50. Mrs. TYCHUS-LAWSON (Nigeria), introducing her delegation's amendment to article 23 (A/CONF.117/C.1/L.44), said that it was basically of a drafting nature. The Nigerian delegation considered that the words "to which the succession of States relates" more clearly brought out the intention of the International Law Commission as explained in its commentary.

51. The CHAIRMAN drew the Committee's attention to two other drafting amendments proposed orally during the earlier discussion of article 23 by the delegations of the Netherlands and Greece, respectively (23rd meeting).

52. Mr. ECONOMIDES (Greece), referring to his delegation's proposal to delete the words "as such", said that either they referred to a succession of States, in which case they were totally superfluous and should be deleted, or they indirectly introduced a concept outside that of the succession of States and in that case had no place in the convention. His delegation had listened carefully to the clarification furnished by the Expert Consultant at the previous meeting, however, and, in order to save time, would not press its amendment.

53. Mr. MEYER LONG (Uruguay) said that in his delegation's view the Nigerian amendment did not improve the text in any way. He did not fully understand the intention behind it and wondered if the Expert Consultant might give his views on its usefulness.

54. Mr. MUCHUI (Kenya) said that his delegation was prepared to accept article 23 in much the same way as it had accepted article 12. In its view there was no doubt at all as to which territory the International Law Commission had had in mind in drafting article 23, whether it was defined as that of the predecessor State or that to which the succession of States related. He therefore fully supported the Nigerian amendment

peared to create difficulties for some delegations, she would withdraw it.

56. The CHAIRMAN, summing up, said that the Committee of the Whole now had before it only the text of article 23 as proposed by the International Law Commission. Since it was his impression that the members of the Committee had been in agreement on the content of the article at the end of the previous meeting, he proposed that article 23, as proposed by the International Law Commission, together with the comments made by the Netherlands delegation concerning the words "State archives" (*ibid.*), should be referred to the Drafting Committee.

57. Mr. MIKULKA (Czechoslovakia) said it was his impression that the delegation of the Netherlands had drawn attention to a problem arising in connection with article 19 and not with article 23. His delegation had no objection to article 23 being referred to the Drafting Committee. It wished, however, to draw the attention of the Working Group on article 19 to the problem raised by the possible interpretation of the term "State archives" as meaning "the State archives of the predecessor State".

58. Mr. MAAS GEESTERANUS (Netherlands) said that the problem appeared to be a drafting one. The Drafting Committee, on the basis of the proposal concerning article 19 which it would eventually receive from the Working Group on that article, could undoubtedly find a solution, either in article 19 or in article 23, to the problem of the definition of "State archives".

59. Mr. PIRIS (France) agreed that the problem was a drafting one and should be solved either by a slight change in article 19 or by the deletion of the word "State" in article 23.

60. The CHAIRMAN suggested that, since the Committee appeared to consider the problem to be of a drafting nature, it should adopt article 23, as proposed by the Commission, and refer it to the Drafting Committee, together with the oral drafting suggestion made by the Netherlands, for consideration in the light of the definition of "State archives" to be provided by the Working Group on article 19.

It was so decided.

61. The CHAIRMAN informed the Committee that he had received a letter from the Chairman of the Working Group on article 19, which had been requested to report on its progress on 18 March 1983. The letter indicated that, after three meetings, during which the Working Group had considered the text proposed by the International Law Commission, together with four written and 10 verbal amendments, the Group had reached agreement on a number of phrases but not on the text of the article as a whole. The Group would hold a Committee meeting on Monday, 21 March 1983, after which its Chairman hoped to be able to submit a compromise text to the Committee of the Whole.

Article 24 (Preservation of the unity of State archives) end of the introductory section 1 of Part III, but before section 2, it would be understood that section 2 (Provisions concerning specific categories of succession of States) was subject to section 1 (Introduction) and that the provisions of section 2 would be valid only to the extent of their consistency with the provisions of section 1. All the provisions concerning specific categories of State succession would therefore operate to the extent of their concordance with article 24, which provided for preservation of the unity of State archives. That understanding was corroborated by the International Law Commission's commentary, which concluded: "Article 24, therefore, provides for a safeguard in the application of the substantive rules stated in the articles constituting section 2 of the present part."

63. Article 24 thus relegated the provisions of section 2 of Part II to the status of mere guidelines and would afford ample opportunity for either of the States concerned to disregard those provisions in the name of preservation of the unity of archives which, in the language of the Commission's commentary, reflected "the principle of indivisibility of archives".

64. The articles in Part III, section 1, were all concerned with the occurrence of succession of States and the consequential extinction and arising of rights to State archives. They thus related to the fact that the rights to State archives had to be extinguished and to arise whenever State succession occurred. The transfer, that was to say the division of State archives, was the logical conclusion of the whole process.

65. Article 24 negated that transfer in the name of unity of archives. By reversing the process one could conclude that article 24 in fact negated the very occurrence of succession of States, and the presence of the article in section 1 as a general rule contradicted the whole of Part III. The Committee would therefore have to decide between the article and Part III.

66. Whenever a dispute concerning the interpretation of Part III arose it would be natural for the States concerned to look into the records of the International Law Commission to establish the correct meaning and import of article 24. His delegation had sought to do so. The records of the Commission showed that the text of the present article 24 had originally formed part of paragraph 6 of draft article F, which dealt with the dissolution of States. At the 1690th meeting of the Commission, in reply to a suggestion that paragraph 6 should be made a separate article, the then Special Rapporteur, now the Expert Consultant, had observed: "Consequently it would be dangerous to generalize the use of a provision which would allow for evasion of the rules which the Commission had laid down."[2]

67. A member of the Commission had replied that the article "embodied a simple safeguard clause, not a rule, and there was therefore no reason why that clause should not apply to all that part of the draft which

68. What had happened later was a mystery. A separate article had suddenly appeared in the final set of draft articles. No elaboration was provided and the commentary on the article hardly explained the reasons for the change.

69. His delegation fully shared the apprehensions of the Special Rapporteur and was not convinced that the articles was merely a safeguard of no practical utility. It viewed the article as one of preponderant importance which in fact negated the whole of Part III.

70. Mrs. PAULI (Switzerland) said that following consultations with other delegations and the observer for the United Nations Educational, Scientific and Cultural Organization (UNESCO), her delegation had revised its original amendment to article 24 and had submitted the revised amendment in document A/CONF.117/C.1/L.29/Rev.2. The aim of the amendment was to reinforce the principle of unity and integrity as enunciated in article 24 as proposed by the International Law Commission.

71. The proposal of Pakistan to delete article 24 ran counter to that principle, and her delegation could therefore not support it.

72. The Swiss amendment was designed to supplement article 24 by introducing the archival concept of joint heritage into the convention. In order to avoid any possible confusion, it should be made clear that it did not involve the idea of the common heritage of mankind applicable to the sea-bed and its resources, but a concept exclusively concerned with archival science.

73. That concept stemmed largely from work done by the International Council of Archives at UNESCO's request and that had formed the basis of a report by the Director-General of UNESCO on problems involved in the transfer of documents from archives in the territory of certain countries to the country of their origin.[4] Referring to section 25 of that document, she described the concept as stemming from two requirements: the need to guarantee the security of archives of common interest and the need to guarantee the rights of other States participating in the common heritage.

74. The Swiss proposal was designed to guide States in finding a solution to archival difficulties that might arise, and she believed that it deserved a place in the future convention.

75. Mr. SHASH (Egypt) asked for some clarification of the principle of indivisibility of archives.

76. Mr. BEDJAOUI (Expert Consultant) said that he was unable to shed any light on the question of archival science from a technical standpoint, and the International Law Commission itself, in its discussion on article 24, had also felt it was tackling something outside its purview. The concept of the unity or indivisibility of State archives was clear in cases of collections by subject matter or sections of history. It might have been

mission had been neither for nor against any question which might arise because of the preservation of the unity of State archives. But it was apparent that the Commission had drafted and included the text of article 24 as a safeguard, therefore, without implying that it should be interpreted in such a way as to constitute a blocking of any succession of archives. The Drafting Committee should therefore examine the wording of the article to ensure that the unity intended did not refer to all State archives, but to each of the groups comprising them.

77. Mr. EVANS (Observer for the United Nations Educational, Scientific and Cultural Organization) said that, although the scope of State archives varied from country to country, the common denominator was the natural accumulation of documents created and maintained.

78. The principle of provenance was an extremely important one and had to be respected. Paragraph 23 of the UNESCO document mentioned by the representative of Switzerland referred to the question of provenance in the following terms: "It is equally essential that to the fullest possible extent the archival principle of provenance or respect for the integrity of archives groups should be observed in all proposed transfers of archives. In accordance with this principle all archives accumulated by an administrative authority should be maintained as a single, indivisible, and organic unity in the custody of that authority or its legally designated successor. This is necesary to preserve the integrity and value of archives as titles, as proofs, and as both legal and historical evidence."

79. Archivists avoided the use of the term "collections", which they regarded as items from a variety of provenances and periods. They considered archives as being a natural, organic accumulation. It was ironic that the representative of Pakistan had given an example of a hiatus in records. That was exactly the sort of thing that archivists wished to avoid. If records were rearranged and redistributed, their value was diminished.

80. Mrs. THAKORE (India) said that archives, unlike property of other kinds, might by virtue of their physical nature be of interest both to the predecessor and to the successor State. They might not easily be susceptible of division. The special characteristics of archives were necessity, arising out of the need to provide effective administrative continuity and ensure the viability of the new State, and sentimental value arising from history and culture. Moreover, the unity of archives needed to be maintained in order to protect the interests of historical research and science. It might not be convenient or even desirable to separate a chapter or a section of a collection and distribute it between the successor and the predecessor States. It should be transferred to the new State as an organic whole, where relevant.

81. In principle, therefore, her delegation supported article 24. Since the safeguard clause in article 24 was relevant to all categories of State succession covered by articles 25 to 29, the International Law Commission, at its second reading, had decided to embody in a separate article what had formerly been paragraph 6 of article F dealing with the dissolution of States, thus according the provision on preservation of the unity of State archives the pre-eminent position which it deserved. Article 24 was couched in general terms and was included in section 1 of Part III to indicate that it was applicable to section 2 of Part III as a whole.

82. The reference to the preservation of the unity of State archives reflected the principle of indivisibility of archives underlying the question of succession to documents of whatever kind constituting such archives, irrespective of the specific category of succession of States involved. Article 24 therefore provided a safeguard in the application of the substantive rules set out in article 25 to 29. It dealt with a very important aspect of succession of States and was based on recognition of the fact that many of the situations that might arise in connection with State archives were of a sensitive nature which could not easily be resolved through the application of uniform rules.

83. The principle of preservation of the unity of State archives could not, however, be invoked to evade the rules laid down in articles 25 to 29 of the Commission's draft, since that would rob those articles of all effect.

84. She therefore believed that the proposal of the delegation of Pakistan to delete article 24 was unnecessary and that the concern expressed by that delegation would be better met by retaining the article.

85. With regard to the Swiss amendment, her delegation thought that the phrase "archival concept of joint heritage" was too vague. Its meaning was not clear, despite the explanation given by the sponsor of the amendment and the observer for UNESCO. At least the concept had not developed to such an extent that it was generally understood and recognized as meriting mention in the draft convention. She supported, in principle, article 24 as proposed by the International Law Commission.

The meeting rose at 6 p.m.

25th meeting

Monday, 21 March 1983, at 10.20 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 24 (Preservation of the unity of State archives) (*continued*)

1. Mr. RASUL (Pakistan) said that he was not entirely satisfied with the explanations given by the Expert Consultant at the previous meeting. His delegation had understood that the article applied before the transfer of State archives to the successor State and thus might offer to the predecessor a pretext, on the ground of the preservation of the unity of archives, for depriving the successor State of certain archives that might be of great interest to that State. If, however, the Expert Consultant could state that that interpretation was not correct and could instead confirm the Indian representative's interpretation (24th meeting) of article 24, namely, that the provision it contained did not affect the transfer of State archives to the successor State and applied only after the transfer had taken place, the delegation of Pakistan would consider withdrawing its amendment (A/CONF.117/C.1/L.9).

2. Mr. SUCHARIPA (Austria) said that he had understood the Expert Consultant to confirm the Austrian delegation's view that article 24 should only be taken to mean that some parts of the State archives of a given State might in themselves constitute an indivisible unity which should be preserved. The safeguard provided in that respect was intended to benefit both predecessor and successor States. The article was of fundamental importance and supplied a balancing element without which Part III as a whole would hardly be acceptable to his delegation.

3. Referring to the Swiss delegation's revised amendment (A/CONF.117/C.1/L.29/Rev.2), he said that the introduction of the archival concept of "joint heritage", well known to archivists all over the world, represented a very useful addition to the International Law Commission's text. At least two of the delegations attending the Conference—the Hungarian delegation and his own—could testify that the concept of joint heritage was not an esoteric idea but could indeed serve practical purposes, for if it had not been applied to the archives which had been common to both countries under the Austro-Hungarian monarchy, both parts resulting from the division of those archives would have lost all their value. He fully supported the Swiss amendment.

4. Mr. KADIRI (Morocco) said that his delegation on the Sixth Committee of the General Assembly had repeatedly argued in favour of including a section devoted specifically to State archives in the proposed draft convention. It therefore welcomed all the articles contained in section I of Part III of the draft, and, in particular, noted with deep satisfaction that the International Law Commission, in paragraph (5) of its commentary on articles 20, 21, 22 and 23, considered the passing of State archives as occurring "by right", entirely free and without compensation. Article 24 was a safeguard clause for the application of the substantive rules laid down in that section. He was unconvinced by the arguments in favour of deleting article 24 advanced by the representative of Pakistan at the preceding meeting and was pleased to note that Pakistan's amendment to that effect appeared to have been withdrawn. The Swiss delegation's amendment appeared at first glance to be of considerable interest but further explanation of its precise scope and significance would be helpful.

5. Mr. PIRIS (France) said that he, too, was pleased to note that the representative of Pakistan seemed willing to withdraw his proposal, which the French delegation would have been unable to support since article 24 laid down a principle which was absolutely fundamental. However, as the Expert Consultant himself had conceded at the previous meeting, it might be possible to improve the International Law Commission's text and he accordingly suggested that the reference to the unity of State archives at the end of the article might be replaced by a reference to the unity of "groups of State archives." The Swiss amendment, which sought to introduce the valuable principle of joint heritage, already endorsed by UNESCO, was acceptable to his delegation subject to two subamendments, namely, the replacement of the words "these States shall" by the words "these States should" and the deletion of the words "management and" in the final passage of the proposed new paragraph 2.

6. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation was prepared to accept the text of article 24 as it stood in view of the importance of the principle of the preservation of the unity of archives. However, it was also important to ensure that the adoption of that principle should not be used by the predecessor State as a pretext for failure to fulfil its obligations towards the successor State and he suggested that perhaps certain guarantees of the successor State's interests should be included in the convention.

7. With regard to the Swiss delegation's amendment, he remarked that article 24 as it stood appeared to be sufficiently wide in scope to cover the case envisaged by the Swiss delegation, while articles 25, paragraph 4, and 26, paragraph 4 provided for appropriate forms of co-operation between the predecessor State and the successor State in specific cases. Moreover, the wording of the Swiss amendment was not wholly satisfactory in that it introduced new terms whose precise interpretation might give rise to difficulties. For all those reasons, he preferred the existing text of arti-

cle 24 and could not support either of the two amendments before the Committee.

8. Mr. de OLIVEIRA (Angola) agreed with previous speakers who had pointed out that the text of article 24 was open to different interpretations. If it meant that all archives were governed by the principle of unity, the article was indeed superfluous and he would support its deletion. If, on the other hand, the object of the article was to safeguard the unity of certain archives only, then the text might perhaps be made clearer by referring to "the unity of archive collections" instead of to the unity of "State archives". In his opinion, the matter could safely be entrusted to the Drafting Committee. The idea embodied in the Swiss amendment was an interesting and potentially a useful one; however, he had some doubts as to the legal value of the concept of "joint heritage", and also wondered whether it was appropriate to include two provisions having different scopes of application in the same article.

9. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation considered article 24 to be not only useful but necessary, a view confirmed by the statements made at the preceding meeting by the Expert Consultant and the representative of UNESCO. The Swiss amendment represented a successful attempt to underline and strengthen the rule proposed by the International Law Commission by applying it to a particular set of circumstances. His delegation was therefore prepared to vote in favour of both the Commission's text and the Swiss amendment and would also accept the modifications to that amendment proposed by the French delegation.

10. Mrs. BOKOR-SZEGŐ (Hungary), while fully endorsing the Austrian representative's remarks concerning the excellent experience of co-operation between Austria and Hungary in the matter of archives in the period following the First World War, stressed the need to apply the principle of unity of archives differently to specific categories of succession of State. In particular, in the case of newly independent States, archives subject to the principle of indivisibility should pass into the custody of the successor State.

11. Mr. MUCHUI (Kenya) expressed support for article 24 as it stood. He was unconvinced by the need for the Swiss amendment which, in his view, might lend itself to serious misinterpretation and, in particular, might be applied in a manner prejudicial to newly independent States.

12. Mr. RASUL (Pakistan) reiterated that part of his earlier statement in which he had said that his delegation would consider withdrawing its amendment if the Expert Consultant confirmed that the provision in article 24 did not affect the transfer of State archives to the successor State and applied only after the transfer had taken place. Some previous speakers appeared to have assumed that the amendment was already withdrawn; he wished to make it clear that such was not the case.

13. Mr. KIRK (United Kingdom) said that his delegation regarded the principle underlying article 24, that of the preservation of the unity or indivisibility of State archives, as a fundamental principle of archive administration, universally accepted by archivists. It therefore supported the text of article 24 as proposed by the International Law Commission, subject to possible drafting improvements which could be undertaken in the Drafting Committee.

14. The amendment proposed by Switzerland was a useful and interesting proposal and his delegation supported it, believing that it would introduce a measure of balance into the enunciation of the principle in article 24 as it stood. He hoped that, in the light of the Swiss amendment, the representative of Pakistan would consider withdrawing his proposal which was unacceptable to the United Kingdom delegation.

15. Mr. KOLOMA (Mozambique) noted that the Swiss delegation's amendment was based on the assumption of the existence of the archival concept or principle of common heritage in respect of archive collections and provided that that principle should guide States involved in a succession in circumstances in which such collections could not be divided up among several States without substantially diminishing their value. In his delegation's view, the amendment raised two main concerns. First, although the concept of joint heritage might be a part of archival science or indeed of modern international law, his delegation had serious doubts about its general acceptance by the international community. Second, cases in which that concept would be applied had not been specified and no objective criteria for identifying such cases had been established either in the amendment itself or in the draft convention. It was not clear whether it would be the predecessor State, the successor State or the two jointly which would determine which cases would be considered in that light.

16. If the concept of "joint heritage" was generally acceptable to the Conference, then his delegation would propose that it should be given formal endorsement in the draft convention, together with a list of specific cases or a number of criteria determining its practical application for the use of both the predecessor and successor States. Unless that was done, those States would necessarily face practical difficulties in identifying the cases to which the concept should be applied.

17. If appropriate improvements were made to the Swiss amendment, his delegation would be ready to revise its position in relation to it. In the meantime, it supported the draft article as proposed by the Commission.

18. Mr. de VIDTS (Belgium) said that his delegation favoured retaining article 24 as it stood, since it took account of changes which had been taking place in the approach to archival questions in cases of succession of States. Because it considered it essential that the unity of archives should be preserved—which was precisely the object of the article—his delegation was unable to support the proposal for the deletion of the article made by Pakistan.

19. The Belgian delegation supported the amendment proposed by Switzerland because it was useful in providing guidelines for situations in which several States had an equal claim to certain archives, ensuring that the management of the archives would be carried out effi-

ciently and with due respect for the rights and needs of the States concerned.

20. Mr. ABED (Tunisia) said that he welcomed the Commission's efforts to provide safeguards for the indivisibility of archive collections, but considered that the provisions of article 24 needed very careful consideration, especially as the article had only been adopted by the Commission in second reading and, in spite of the useful explanations provided by the Expert Consultant, the value of the concept or principle of the unity of archives as stated in article 24 was still doubtful. Although it was a vital principle in itself, its use in article 24 might in some cases give grounds for disputes between the States concerned. For the sake of greater precision, it might be useful to include a reference to collections of archives, as suggested by the representative of France. That suggestion should be referred to the Drafting Committee with a view to finding the appropriate formulation.

21. His delegation regretted that it could not accept the amendment proposed by Switzerland, as the vague provisions which it contained would not simplify matters in any constructive way.

22. Mrs. VALDÉS (Cuba) said that her delegation regarded the provisions of article 24 as very important. The principle of the indivisibility of archives was a very useful one and should be maintained. The Cuban delegation could not therefore support Pakistan's proposal that the article should be deleted.

23. In her delegation's opinion, the text proposed by Switzerland was narrower in scope than the article proposed by the International Law Commission. Furthermore, the additional paragraph proposed by Switzerland would offer the predecessor State in certain circumstances a pretext for withholding certain State archives on the grounds that they were part of its heritage, and as a consequence difficulties might arise, especially where newly independent States were concerned. The Cuban delegation would therefore be unable to support the Swiss amendment; it would support article 24 as it stood in the Commission's draft.

24. Mr. KEROUAZ (Algeria) said that his delegation favoured maintaining article 24 as drafted. It represented a general safeguard clause, protecting the unity of State archives. The outstanding drafting points on which his delegation had reservations could easily be settled by the Drafting Committee.

25. He could certainly not support the proposal by the Pakistan delegation that the draft article should be deleted. He also questioned the juridical value and utility of the Swiss amendment. The text proposed by Switzerland appeared to be dangerous, in allowing too much latitude for interpretation, possibly tending to undermine the generally accepted principle of the indivisibility of archives, especially in cases of succession involving newly independent States. The Swiss text did not seem to take account of certain situations, covered by subsequent articles of the Commission's draft, in which the State archives in question had belonged not to the predecessor State but to the territory affected by the succession and were thus fully the property of the successor State.

26. His delegation wished to reserve its final position on the Swiss amendment until it had been able to consider that amendment carefully in the light of the provisions of article 26.

27. Mr. ECONOMIDES (Greece) said that his delegation favoured retaining article 24 as it stood and shared the view of other delegations that its provisions were of vital importance. Accordingly, it could obviously not support the amendment proposed by Pakistan.

28. The Swiss delegation proposed a useful complement to the draft article and his delegation was ready to support it. However, it might be possible to draft the additional paragraph in simpler and more flexible terms; it might be sufficient simply to state in such a paragraph that, in order to conform with the provisions of paragraph 1, the States concerned should be guided by the concept of common heritage whenever appropriate or necessary. That concept was the essence of the proposed additional paragraph, as his delegation understood it, and did not require any great elaboration.

29. Mr. ASSI (Lebanon) said that his delegation's difficulty with respect to article 24 was that it was not clear how it would operate in practice. Although his delegation could not approve of the splitting-up of archives if, as a result, their historical and cultural value was diminished, it was not clear whether the predecessor or successor State, or both by agreement, could guarantee that that eventuality did not take place. In the majority of cases the division of archives seemed to be the rule. Although the predecessor State in some cases might usefully continue to hold the archives for the sake of their preservation, the best arrangement was that all archives associated historically, culturally or for the purposes of administration with the territory subject to succession should pass to the successor State, the predecessor State retaining copies of those which needed to be preserved in a certain group.

30. His delegation saw the justification for the Pakistan proposal to delete the article. It preferred, however, to support the Swiss amendment. At the same time he pointed out that to call for the unity of archives to be respected without providing any practical ways and means of doing so would only create more complications and problems. The principle of the indivisibility of archives was an important one, but it was important also to give guidelines and to provide for practical arrangements and to identify the entity which would be responsible for making such arrangements. The problem might be referred to the Drafting Committee with a view to finding a generally acceptable formula.

31. Mr. MORSHED (Bangladesh) said that in his view the concept of the unity of archives was well reflected in the Commission's draft of article 24. While his delegation understood the basic idea behind the Swiss amendment, it believed that the proposed additional paragraph would introduce an element of specificity and a number of new elements which would conflict with the Commission's general concern to avoid stipulating the details of the process of the passing of archives. In general, therefore, his del-

egation was not convinced of the usefulness of the amendment.

32. Mr. ZSCHIEDRICH (German Democratic Republic) said that article 24 was of particular importance to his delegation. Archives were constantly growing with the accretion of new components which were related to those already existing and formed an inseparable whole with them. That fact was confirmed by the principle of provenance, as applied in archive science, which was designed to prevent the splitting up of archive groups. The value of such archives lay in their unity and in the fact that they could be used as a single whole. Article 24 thus had great practical value from that point of view. His delegation could not therefore support the proposal by Pakistan that the article should be deleted.

33. Thanks to modern technology and easy methods of reproduction, the indivisibility of State archives did not present any serious problems. His delegation was accordingly not convinced of the need for the additional paragraph proposed by the delegation of Switzerland, since in its view article 24 as it stood fully covered the important concept of the preservation of the unity of archives. He supported the comments made by the representative of Yugoslavia on the Swiss amendment.

34. As the representative of Mozambique had pointed out, the inclusion of the phrase "the archival concept of joint heritage" might give rise to difficulties in practice. In general, the amendment would introduce further complications and problems instead of establishing clear rules to regulate the question. It would therefore be better to retain article 24 as it stood.

35. Mr. BA (Mauritania) said that the principle of the unity of certain archives, in the sense that certain groups of archives had an internal logic and by reason of their homogeneity must be retained as an indivisible whole, had been generally accepted in the debate. His delegation believed that the concept of unity should be embodied in article 24, but regarded the drafting of that article as it stood as rather ambiguous. He suggested that the Drafting Committee might be asked to draft it in clearer and more precise terms.

36. His delegation could not support the Pakistan proposal to delete the article.

37. The concept of "joint heritage" mentioned in the Swiss amendment was rather vague and the proposed provision might serve as an escape clause for the predecessor State, which might use that concept as grounds for holding up the transfer of the whole or part of the archives which should pass to the successor State. His delegation would therefore oppose the Swiss delegation's amendment.

38. Mr. KOREF (Panama) said that his delegation was in favour of maintaining article 24 but considered that its drafting might be improved, especially the Spanish version. The idea reflected in it was very clear and concise and any amendment would only lead to confusion. His delegation therefore would not support any amendment to the article, especially as article 26 would probably clarify and resolve many possible doubts and hesitations.

39. Mr. HAWAS (Egypt) said that his delegation saw no need for the introduction of the new paragraph proposed by the Swiss delegation, as the scope of article 24 as it stood was broad enough and the amendment would introduce a rather imprecise and indefinite element which might lead to further complications.

40. As his delegation saw it, there were three points to be considered in connection with article 24. The first was that the article should scrupulously avoid giving the impression that the passing of State archives could in any way be hindered or help up. He believed that the article could not be interpreted as restricting such passing, as it was based on the assumption that the general provisions of Part III of the draft convention, governing the passing of State archives from the predecessor to the successor State, invariably applied. Second, in referring to the principle of the unity of archives, it was important to make clear that the principle related only to a part or parts of the archives in question. The article as it stood might give the impression that the whole of the State archives subject to passing was likely to be involved, thus placing an obstacle in the way of the passing of those archives to the successor State. Some new wording should be found by the Drafting Committee to replace the last five words of the article, making it clear that the unity in question related only to those parts of the State archives which were by their nature indivisible.

41. The third point had already been raised by the representative of Lebanon, who had asked how it would be determined which entity would keep and care for the archives. As he had suggested, that responsibility would most naturally fall on the successor State, while the predecessor State would naturally be entitled to retain copies of such parts of the archives as it might need to preserve the unity of certain groups or collections.

42. Mr. MOKA (Congo) said that, in the light of the explanation provided by the Expert Consultant and of the discussion which had taken place, his delegation would support article 24 as drafted by the International Law Commission. In its existing form, the text would preserve the indivisibility of archive collections. His delegation would accordingly not support the amendments of Switzerland and Pakistan as it was not persuaded of their utility and indeed considered that they would not contribute to clarifying the issues.

43. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation recognized the importance of preserving the unity of State archives where that was necessary. It nevertheless had some difficulty in giving its full support to article 24 as it stood; its wording could be interpreted by either the successor State or the predecessor State in a manner contrary to the principle of unity, where that was applicable, or to the interest of the successor State whose receipt of certain archives could be prejudiced on the pretext of the unity of archives in cases where the predecessor State might have its own reasons for applying the principle. The concern of the delegation of Pakistan was therefore legitimate. It would be preferable to reflect such concern in article 24 rather than to delete the article altogether; in that connection he thought that a solution might be sought along the lines suggested by the representative of Egypt.

44. His delegation had certain misgivings regarding the concept of joint heritage in respect of State ar-

chives, as set out in the revised amendment of the delegation of Switzerland. The notion of joint heritage could in practice give rise to disputes when the question arose as to how the concept should be interpreted by the States concerned.

45. Mr. TARCICI (Yemen) considered that the revised amendment could be interpreted in such a way as to pervert the meaning of article 24 as drafted by the International Law Commission. It might, however, be revised to take account of the views expressed by the representatives of Algeria, Lebanon, Egypt and the United Arab Emirates.

46. Mr. MIKULKA (Czechoslovakia) said that his delegation could accept article 24 as drafted by the International Law Commission as the provision represented a useful and necessary safeguard. The problem of the unity of State archives was not affected by the articles contained in Part III. The International Law Commission's text was well balanced and neutral in character. Such was not the case with the Swiss amendment, which went further than the International Law Commission's text in so far as it sought to introduce the concept of priority of solutions favouring the preservation of the unity of State archives compared to other solutions. It also seemed to his delegation that the Swiss amendment, contrary to the International Law Commission's text, laid down rules of behaviour for predecessor and successor States which were not relevant to the problem of succession of States *per se*. As regards the concepts of national heritage and the archival concept of joint heritage, his delegation shared the objections of the delegations of Yugoslavia and the German Democratic Republic.

47. Mr. BEDJAOUI (Expert Consultant) said it was more appropriate to refer to the integrity or unity of State archive collections rather than to the unity of State archives. Archives did not constitute a single unit and, as conceived by the International Law Commission, article 24 neither said nor implied that State archives were indivisible. The State performed many functions, including *inter alia* its parliamentary, diplomatic and economic activities, and archives were created for each one of those activities. There was accordingly no such thing as a unity of State archives but only a unity of each archive collection. Archivists moreover spoke of the dismemberment of archive collections, as for example by extraction or insertion.

48. It had been the Commission's clear intent that the passage of State archives for the predecessor to the successor State should not be prevented on the pretext of alleged unity. By inserting article 24 as a safeguard clause, the Commission had wished to forestall any possible disputes. The principle of unity should not be regarded as binding exclusively on the predecessor State; it also bound the successor State which had an equal claim.

49. The amendment of Switzerland was well drafted but raised the problem of the linkage between article 24 as it stood, which would become paragraph 1, and the proposed new paragraph 2. Paragraph 1 would stipulate that a solution should not be prejudged but, in paragraph 2, a solution—namely that relying on the concept of national heritage—would be suggested. The concept of national heritage had been discussed during an archivists' conference under the auspices of UNESCO, when the view had been expressed that such an archival collection should be kept intact in the national archives of one of the States, which would have responsibility for it and own it, and that the other State, its archivists and researchers would have full access to it. Notwithstanding the undoubted merits of the Swiss proposal, he had doubts regarding the desirability of including in article 24 a provision with such highly technical implications.

50. Mrs. PAULI (Switzerland) said that the purpose of her delegation's amendment was that the concept of common heritage should be mentioned in the convention. The concept should not, however, be regarded as an obstacle in the way of any succession in matters of archives; it would apply only in cases where archives could not be divided without prejudice. In that connection the concept of common heritage could be useful but its application should by no means be automatic or compulsory. Her delegation retained an open mind as to the wording of its amendment and, in that connection, accepted the suggestions of the representative of France. She requested that her delegation's amendment should be put to the vote.

51. Mr. RASUL (Pakistan) said that his delegation had repeatedly expressed the apprehension that the predecessor State might take advantage of article 24 in order to deprive the successor State of its rights to the State archives to which it was entitled. The representative of Lebanon had correctly understood that the issue was one of implementation and had pointed out that the predecessor State could hinder the passing of State archives to the successor State. The Pakistan delegation viewed the article in the same light as the representative of Egypt, subject to the three points which the latter had made.

52. His delegation was prepared to withdraw its amendment in the light of the Expert Consultant's observation to the effect that article 24 in no way hindered the passing or transfer of State archives to the successor State. It would therefore support the retention of the article but, in conformity with the views expressed by other delegations, would welcome drafting changes which would make it conform with the intent of the International Law Commission as explained by the Expert Consultant.

53. Mr. PAREDES (Ecuador) said that the words "collections of" should be added both in the title and in the final phrase of article 24.

54. Mr. PIRIS (France) said that he had been about to propose an identical amendment to that proposed by the representative of Ecuador.

55. Mr. HAWAS (Egypt) supported the amendments proposed by the representatives of Ecuador and France.

56. Mr. MORSHED (Bangladesh) said that the amendment proposed by Ecuador corresponded with the views expressed by the Expert Consultant and would presumably therefore be acceptable to most delegations.

57. Mr. TÜRK (Austria) supported the proposed amendment. He added that the Drafting Committee should ensure the concordance of the texts in the var-

ious languages, especially as the words "archive collection" were not an adequate translation of the French term *"fonds d'archives"*.

58. Mr. KADIRI (Morocco) proposed that the title and the last phrase of the French version of article 24 should be amended to read *"sauvegarde de l'intégrité des fonds d'archives d'Etat"*.

59. Mr. MNJAMA (Kenya) suggested that the words "of record classes or series" should be added before the words "of State archives".

60. Mr. TÜRK (Austria) said that his delegation could accept both the Swiss and the Moroccan amendments, the latter being purely a drafting change.

61. Mrs. PAULI (Switzerland) recalled that she had endorsed the French representative's proposal to change the word "shall" to "should" and omit the words "management and" in her delegation's text.

62. Mr. ECONOMIDES (Greece) suggested that a vote should be taken on the Swiss delegation's amendment, subamended as proposed by France, and that the Drafting Committee should be asked to consider whether "unity" or "integrity" was the better word.

63. Mr. LAMAMRA (Algeria) supported the Moroccan delegation's oral amendment which would have the advantage of making the text of article 24 conform with the title.

64. Mr. HAWAS (Egypt) agreed with that view and suggested that the Committee should take a vote upon the Moroccan delegation's oral amendment. The Kenyan representative's suggestion should be referred to the Drafting Committee.

65. Mr. BA (Mauritania) considered that "integrity" was a more precise term than "unity".

66. The CHAIRMAN called for a vote on the Swiss delegation's revised amendment (A/CONF.117/C.1/L.29/Rev.2) as orally subamended in the last phrase to read: ". . . these States should be guided by the archival concept of joint heritage for the purpose of the utilization of such collections."

The amendment was rejected by 32 votes to 17, with 14 abstentions.

67. Upon the proposal of Mrs. BOKOR-SZEGÖ (Hungary), a vote was taken on the Moroccan delegation's oral amendment.

The Moroccan amendment was adopted by 54 votes to none, with 10 abstentions.

Article 24, as amended, was adopted by 65 votes to none, with 1 abstention.

68. The CHAIRMAN announced that the Drafting Committee would be requested to ensure the concordance of the text in the various languages.

69. Mrs. BOKOR-SZEGÖ (Hungary) said that her delegation had abstained in the vote on the Moroccan amendment because the expression *"fonds d'archives"* appeared nowhere in the convention, which spoke only of *"archives"*.

70. Mr. WHOMERSLEY (United Kingdom) explained that his delegation had abstained in the vote on the Moroccan amendment but had voted in favour of the article as a whole. It considered that "integrity" and "unity" were synonymous in English. Since the amendment had related to the French version, his delegation wished the question of the necessary changes in the English text to be considered by the Drafting Committee.

71. Mr. TÜRK (Austria) said that his delegation had voted in favour of article 24, a key provision of section 1 of Part III of the draft. It regretted the rejection of the Swiss amendment, which would have been a useful addition to the article.

72. He hoped that the Drafting Committee would pay special attention to the English version of the Moroccan amendment.

73. Mr. HAWAS (Egypt) said that his delegation had voted in favour of article 24 as amended by the Moroccan representative and hoped that the Drafting Committee would find suitable wording in English.

74. His delegation had voted against the Swiss delegation's amendment despite its merits because it believed that the convention was not the right place for such a provision, which if adopted would have given rise to problems of interpretation.

The meeting rose at 1 p.m.

26th meeting

Monday, 21 March 1983, at 3.10 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 24 (Preservation of the unity of State archives) (*concluded*)

1. Mr. RASUL (Pakistan) said that, at the previous meeting, his delegation had voted against the Swiss amendment (A/CONF.117/C.1/L.29/Rev.2) for the reasons it had given in the course of the discussion. It had voted in favour of article 24, as proposed by the International Law Commission and amended by Morocco, in the light of the explanations given by the Expert Consultant and the points made by the representative of Egypt at the same meeting.

2. Mr. MORSHED (Bangladesh) said that his delegation had voted against the Swiss amendment in the light of the explanations given by the Expert Consultant. It had voted in favour of the existing text of article 24, as amended by Morocco.

3. Mr. PIRIS (France) said that his delegation had voted in favour of the International Law Commission's text as amended by Morocco, because it embodied an essential principle. None of the provisions in Part III of the draft convention could impair the essential principle of indivisibility of State archive collections, a principle which should be preserved in all circumstances. The Swiss amendment had embodied a concept which was generally recognized by professionals, and its revised wording was flexible and imposed no obligation on the parties concerned but rather suggested a method of procedure. His delegation greatly regretted that that amendment had been rejected.

4. Mr. LAMAMRA (Algeria) said that his delegation had voted against the Swiss amendment because it was not convinced that that wording was compatible with the fundamental rule in article 20. The joint heritage concept was a useful approach but the reference to it would have been more appropriate in the form of a recommendation as to procedure. His delegation had voted in favour of the International Law Commission's text as amended by Morocco.

5. Mr. MUCHUI (Kenya) said that his delegation had voted against the Swiss amendment for reasons it had given earlier. It had abstained in the vote on the Moroccan amendment, not because it did not agree with the underlying idea, but because it was not fully convinced that the term "integrity" was more appropriate than the term "unity", or that the term "collections" was the best way of expressing what was intended. His delegation had suggested other, and in its view more appropriate, terms, which had not been taken up. It had voted in favour of article 24, as amended, in the belief that the Drafting Committee would not be precluded from looking again at the terms "integrity" and "collections" and deciding for itself whether or not they could be replaced by something more appropriate.

6. Mr. de OLIVEIRA (Angola) said that his delegation had abstained in the vote on the Swiss amendment, despite its merits, because of the difficulty of harmonizing the original text of the article with the new paragraph 2. His delegation had voted in favour of the text proposed by the International Law Commission, as amended by Morocco, in the light of the explanations given by the Expert Consultant, and in particular of the assurance that the safeguard clause could not block the normal operation of the mechanisms for the passing of archives.

7. Mr. CHO (Republic of Korea) said that his delegation had abstained in the voting on both the Moroccan amendment and article 24, as amended. His delegation was fully aware of the concern of many delegates to preserve the integrity of archive collections, but felt that the text of article 24 as amended by Morocco could still be open to subjective interpretation, since it did not state clearly who was to decide which archive collections were indivisible and which were not. Furthermore, his delegation was of the view that paragraphs 4 and 5 of article 25, paragraph 4 of article 28, and paragraph 5 of article 29 specifically stipulated the duties of the State which was the custodian of the State archives concerned to provide the interested parties with appropriate reproductions of them. Those provisions might well solve any problems of integrity of archive collections that might arise as a result of a succession of States.

Article 25 (Transfer of part of the territory of a State)

8. Mr. SZATHMARY (Hungary), introducing his delegation's amendment to the article (A/CONF.117/C.1/L.30), said that, while it was important to preserve the unity of State archives, that principle should be implemented for the various categories of succession of States in the light of the various circumstances. In the case of newly independent States, what was involved was the formation of a State on the basis of the right of peoples to self-determination. All the provisions of article 26, therefore, corresponded to that principle. The situation was very different, however, in respect of article 25. As the Expert Consultant had explained, only a minor territorial change was involved and, in view of the specific nature of that change, it might be very difficult to determine which State archives exclusively or principally related to the territory in question in addition to those State archives which, for normal administration of the territory to which the succession of States related, should be at the disposal of the successor State.

9. There were many cases of a common cultural heritage shared by the successor and predecessor States and the importance of preserving that common heritage had been emphasized in many international fora, where it had generally been agreed that collections should be kept intact and could not be divided up without losing their value. The Director-General of UNESCO, in a report to the General Conference of that Organization in 1978,[1] had emphasized, without making any distinction between the various categories of succession, that archives amassed by an administrative authority should be maintained as an indivisible and organic unit and should be kept and administered by that authority or its legally constituted successor. In the particular case of succession in which a minor part of a territory passed from one State to another, it seemed only reasonable that the State which, up to the date of the succession of States, had kept and administered the State archives in question should continue to do so, while at the same time respecting the rights of the successor State.

10. The Hungarian delegation was confident that the amendments it proposed would bring article 25 fully into harmony with article 24, whose title referred to preservation of the unity of State archives.

11. Mr. TÜRK (Austria), introducing his delegation's amendment (A/CONF.117/C.1/L.31), said that article 25 should address itself to the functional connection between archives, the administrations producing them and the territories on which they were created, in other words, to the "archive-territory" link referred to in the International Law Commission's commentary. The essential point in the case of a succession of States was,

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[1] See UNESCO, *General Conference, Twentieth Session*, Paris, 1978, document 20/C.102, para. 23.

therefore, that the archives should have been created by an administration or the representatives of the transferred territory, whether they were constituted within or outside the territroy concerned. The fact that archives contained information relating to a transferred territory could not be regarded as legally relevant to the definition of ownership. Therefore the notion of the territory to which the archives related did not seem adequate to his delegation, because it could result in diplomatic archives, for example, being deemed to be the property of the State in which an embassy was established, and not of the State which the embassy represented. The same was true of consular archives or archives of administrations charged with international affairs.

12. The Committee of the Whole had recently discussed the concept of "belonging" or "having belonged" in relation to State property or archives belonging to the predecessor State according to its internal law. In the Austrian amendment, the idea of belonging was not linked to the internal law of a State. It was employed in the sense of being pertinent to a given territory, whether owned by it or not. The French word *"appartenant"* was perhaps more precise, but the English expressions "belonging" and "having belonged" had been used in a number of international treaties and were therefore amply supported by State practice.

13. The Austrian delegation had taken note of the Hungarian amendment and was prepared to withdraw its own amendment in favour of the Hungarian proposal, if the Committee thought the latter preferable. An important element in paragraph 1 of article 25, with which the Austrian delegation fully agreed, was the priority to be given to an agreement between the predecessor and successor States based on the principle of equity and concluded in the light of all relevant circumstances.

14. Mrs. THAKORE (India) said that article 25 as drafted by the International Law Commission was acceptable to her delegation in principle. The article dealt with a special kind of succession, namely the transfer of part of the territory of a State, a typical example of which was a boundary adjustment. That did not, as a rule, involve the transfer of a large amount of archives, but only the passing of a few administrative archives. The Commission's text was flexible and well-balanced and provided equitable solutions. With regard to paragraph 5, it was her delegation's understanding that the handing over of papers should not jeopardize the security or sovereignty of the successor State. It might perhaps have been preferable to provide for the possibility of the successor State obtaining reproductions from the predecessor State free of cost.

15. The Indian delegation appreciated the concern underlying the Hungarian and Austrian amendments to article 25.

16. Mr. JOMARD (Iraq) said that his delegation found the International Law Commission's text balanced and quite acceptable, although it preferred the Hungarian delegation's version of paragraph 2. It proposed, however, that the word "normal" should be deleted from both the Commission's text and the Hungarian wording of that paragraph since it added nothing to the provision.

17. Mr. DJORDJEVIĆ (Yugoslavia) said that article 25, as proposed by the International Law Commission, was comprehensive enough to cover the various situations that could arise in the case of transfer of part of a territory. Notwithstanding the doubts expressed in the Commission during the drafting of article 25, the use of peace treaties as sources of law was fully justified, since treaties had provided solutions in many cases.

18. In view of the delicate nature of the matters covered in article 25, his delegation was not prepared to accept substantial changes to the International Law Commission's text. The Hungarian amendment limited the scope of paragraph 2 by providing for the transfer only of the archives referred to in paragraph 2(*a*) of the Commission's draft. His delegation could not accept such a restriction of the categories of archives which should pass to the successor State.

19. By employing the term "belonging or having belonged . . .", the Austrian amendment clarified to some extent the "archives-territory" link, but it also limited the categories of the archives which should pass to the successor State.

20. The Yugoslav delegation therefore preferred the existing formulation of article 25 which made it quite clear that the successor State should receive all archives that related exclusively or principally to the transferred territory.

21. Mr. HAWAS (Egypt) said that his delegation supported the International Law Commission's text of article 25 because it was well formulated and comprehensive in scope. Acceptance of either the Hungarian or the Austrian amendment would detract from the usefulness of the provision.

22. Mr. MORSHED (Bangladesh) also supported article 25 as proposed by the International Law Commission. It was evident that the Commission had gone to some pains to put forward the best possible solution.

23. Mr. BEDJAOUI (Expert Consultant) stressed the importance of a clear understanding of the principles set forth in article 25 and of their phased application.

24. Paragraph 1 provided for the conclusion of agreements between the States concerned. Paragraph 2 set forth certain basic rules for dealing with situations where no agreement had been concluded. The International Law Commission had examined various criteria for establishing the "archives-territory" link, which accorded different weights to the fundamental principles that should govern the passing of archives (territorial or functional connection, territorial origin and respect for the unity of groups of archives). In diminishing order of importance, the first possible criterion was that of the archives belonging to the territory, as suggested in the Austrian amendment. But the Austrian amendment related to local archives of the territory, not State archives of the predecessor State in that territory. The former category was not concerned since in any case they already belonged to the territory. The second was that the archives related directly to the territory in question, while the third was that they related exclusively or principally to that territory. The fourth criterion was that the archives were linked to the interests of the transferred territory.

25. Taking all those possible factors into account, the International Law Commission had felt that the phrase "that relates exclusively or principally . . ." was the best available formula in that type of succession of States.

26. Referring to other points which had been raised, he observed that the reference to embassy archives was not really relevant, since an embassy was an extraterritorial entity.

27. Various questions had been raised concerning the use in paragraph 2, subparagraph (*a*), of the term "normal administration": that term had been used in order to refer to the usual needs of an administration, while at the same time distinguishing between such archives and other types of archives referred to in subparagraph (*b*).

28. Mrs. BOKOR-SZEGÖ (Hungary) said that, having heard the observations of the Expert Consultant and in order to facilitate the discussion, her delegation had decided to withdraw its amendment. It nevertheless maintained its position concerning article 25 as proposed by the International Law Commission, as well as its view that the text it had proposed was in accord with article 24.

29. Mr. HAYASHI (Japan) expressed concern that neither of the two criteria contained in paragraph 2 of article 25 was sufficiently clear from the juridical point of view.

30. Paragraphs 3 to 5 of the article, as they stood, could have an unjustifiable effect on the legitimate interests of third States. His delegation believed that due regard should be paid to such interests in the application of rules governing the transfer of archives. The same held true for article 26, paragraph 3; article 28, paragraphs 2 and 4; and article 29, paragraphs 3 and 5.

31. He trusted that the Drafting Committee would clarify the wording of article 25, and also hoped that, by way of clarification, some protection of the interests of third States would be provided, for example by adding the words "as far as possible . . ." in paragraphs 3 to 5.

32. Mr. BROWN (Australia) expressed support for the International Law Commission's text of article 25 but suggested that the words "to the territory" in paragraph 3 should be deleted, as they were superfluous.

33. Mr. PIRIS (France) said first of all that he felt it might be desirable to delete the words "by that State" in pararaph 1 of article 25, as well as paragraph 5 of article 28. He referred in that connection to the comments he had made on paragraph 1 of article 13 (11th meeting) and paragraph 2 of article 16 (17th meeting) of the draft convention. He next pointed out the vagueness of several of the terms used in article 25, such as "normal administration" (paragraph 2(*a*), "exclusively or principally" (paragraph 2(*b*), which could with advantage be replaced by "directly", or "connected with the interests" (paragraph 4).

34. With regard to the Austrian amendment, he appreciated the idea behind it, namely, to replace the criterion of relating to a territory by the more precise one of belonging to a territory. That amendment seemed to him to improve the text drafted by the International Law Commission and he would therefore support it.

35. The French delegation regretted the withdrawal of the Hungarian amendment, with which it had agreed as far as paragraph 2(*b*) was concerned.

36. Mr. ECONOMIDES (Greece), referring to paragraph 1, asked whether the reference to agreements between States also allowed for the possibility of referral to arbitration or to the International Court of Justice.

37. He would also be glad to learn why the phrase "should be at the disposal of the State . . ." was used in article 25, paragraph 2(*a*), whereas article 26, paragraph 1(*b*), which dealt with an analogous situation, employed the phrase "should be in that territory".

38. His delegation could support the International Law Commission's text of article 25, although it shared the view of other delegations that several of the terms used in the article were rather vague.

39. Mr. BEDJAOUI (Expert Consultant) replied that paragraph 1 provided not only for the conclusion of agreements between States on the substance of the passing of State archives, but also for the referral of the matter to another body for settlement.

40. Mr. TÜRK (Austria) said that his delegation had already explained why it did not agree with the International Law Commission that the words "that relates exclusively or principally" in paragraph 2(*b*), reflected the most appropriate criterion for determining the passing of State archives. He wished also to point out that article 26, paragraph 1(*a*), dealing with newly independent States, referred to the same criterion as had the Austrian amendment, namely that the archives should belong to the territory in question. He could not understand why a distinction had been made between those two articles.

41. Mr. MIKULKA (Czechoslovakia) said that he wished to comment on a drafting problem to which he had already drawn the Committee's attention in connection with article 13. It was possible to interpret the text of article 25, paragraph 1, as meaning that the predecessor and successor States were obliged to settle the passing of State archives by an agreement between them. That was not the International Law Commission's interpretation, according to paragraph (6) of its commentary on the similar text in article 13 to which paragraph (24) of the Commission's commentary on article 25, paragraph 1, referred. His delegation agreed with the International Law Commission's interpretation and suggested that it would be useful to amend paragraph 1 to read:

> "1. When part of the territory of the State is transferred by that State to another State and if the passing of State archives of the predecessor State to the successor State is not settled by agreement between them:".

The text would then proceed directly to subparagraphs (*a*) and (*b*) of the existing paragraph 2. That wording would preserve the primacy of agreement between the States concerned, which the International Law Commission favoured in its commentary. He suggested that the amendment suggested by his delegation should be referred to the Drafting Committee.

42. Mr. HAWAS (Egypt) pointed out, in connection with the Austrian amendment to paragraph 2(*b*) of article 25 that, although the criterion of belonging was applied in article 26, paragraph 1(*a*), the following subparagraph 1(*b*) reverted to the criterion referred to in article 25, paragraph 2(*a*). There was therefore no inconsistency between the formulation in the two articles.

43. If there was anything to be done in that connection, it was to add to article 26, paragraph 1, a new subparagraph similar to article 25, paragraph 2(*b*). His delegation would come back to the matter when article 26 was discussed.

44. Mr. HAYASHI (Japan) asked whether the Austrian amendment was intended to cover local archives.

45. Mr. TÜRK (Austria) said that his delegation's proposal did not aim to enlarge the scope of article 25. He concurred with the view of the International Law Commission that local archives were not included.

46. Mr. BA (Mauritania) cited the Expert Consultant's opinion that there were two possible criteria for determining which archives should pass, namely the fact of their belonging or the fact of their relating to the territory transferred. Article 25 dealt with the case of two States both of which continued to exist. There was no question of the extinction of one of them. Hence the idea of belonging was ambiguous and could be interpreted differently by the two countries concerned. The word "relates" was therefore more appropriate. The unhappy repetition of the word in paragraph 2(*b*) should be remedied, however. In the French text the words "*se rapportant*" might be replaced by the word "*afférant*" in the first place where they occurred.

47. He urged the Austrian delegation to withdraw its amendment, which might be wrongly interpreted by some countries.

48. Mr. BEDJAOUI (Expert Consultant) said that the International Law Commission had decided not to become embroiled in the problem of local, provincial or other archives. It had addressed itself only to State archives, which might, however, be kept either centrally or regionally.

49. The Greek representative had inquired whether there was any distinction to be made between the phrase "should be at the disposal of the State" used in article 25, paragraph 2(*a*) and the phrase "should be in that territory" used in article 26, paragraph 1(*b*). The choice of wording was explained in paragraph (25) of the International Law Commission's commentary. Under article 25, paragraph 2(*a*), by agreement between the States concerned, the archives could pass whether or not they were physically located in the territory transferred.

50. Mr. TÜRK (Austria), replying to the representative of Mauritania, said that, in archival science, the term "belonging" had only one meaning. Documents belonged to the administration to whom they were addressed, even if the subject matter was wholly relating to a third party.

51. The CHAIRMAN put to the vote the Austrian amendment to article 25 (A/CONF.117/C.1/L.31).

The amendment was rejected by 21 votes to 12 with 35 abstentions.

52. The CHAIRMAN put to the vote article 25, as proposed by the International Law Commission.

Article 25, as proposed by the International Law Commission, was adopted by 59 votes to 1, with 9 abstentions, and referred to the Drafting Committee.

53. Mrs. BOKOR-SZEGÖ (Hungary), speaking in explanation of vote, said that her delegation had abstained in the vote on the International Law Commission's text of article 25. In its view paragraph 2(*b*) did not serve the interests of all the States concerned in those cases where there was a legacy of State archives which constituted a common cultural heritage. In such cases, the predecessor State should retain such archives and make appropriate reproductions available to the successor State.

54. Mr. KIRK (United Kingdom) said that his delegation had abstained in the vote on the Austrian amendment because, while sympathetic to the thought underlying it, it considered the formulation "belonging or having belonged" too vague. His delegation had voted in favour of the International Law Commission's draft of article 25 as representing a not unreasonable text to deal with that category of succession of States to archives. It was its understanding that paragraphs 3 and 4 would of course be interpreted in accordance with the internal law of the State concerned. Finally, it considered that the points of a drafting nature which had been raised should be examined by the Drafting Committee.

55. Mr. PIRIS (France) said that his delegation had voted in favour of the Austrian amendment, which had the merit of distancing itself from the principle of "territorial connection", although the drafting did not seem to it to be completely satisfactory. It had abstained on article 25, and it would point out that the "best available evidence" mentioned in paragraph 3 might of course consist of reproductions, as the International Law Commission had mentioned in paragraph (21) of its commentary on the article. The same observation applied to articles 26, 28 and 29. Paragraph 5 of article 25 contained a useful reference to reproductions of State archives of the successor State, and that might well be included also in article 26.

56. Mr. FONT (Spain) said that his delegation had abstained in the vote on article 25. It had done so partly for the reasons that had caused it to abstain in the vote on article 13. It also considered that the argument advanced by the International Law Commission in its commentary did not lead to the conclusions it had drawn in its formulation of paragraph 2(*a*). The Commission appeared to have based itself on peace treaties which were, in its own judgement, doubtful precedents. In paragraph (22) of its commentary the Commission had expressed the view that local archives were not State archives. That was an opinion which his delegation did not share. Whether they were or not depended on the internal law of the State concerned.

57. Mr. MORSHED (Bangladesh) said that his delegation had voted in favour of the International Law

Commission's text, which it regarded as the best option. It had abstained in the vote on the Austrian amendment, which would not, in its view, have improved the text.

58. Mr. AL-KHASAWNEH (Jordan) said that his delegation had voted in favour of the Austrian amendment, which employed more established terminology. However, it could also accept the International Law Commission's text of article 25. Nevertheless it hoped that that text would be made clear by the Drafting Committee.

59. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had abstained in the vote on article 25 as proposed by the International Law Commission, because it was not convinced that the rules enunciated in that text were sufficiently clear for practical application. It had also abstained in the vote on the Austrian amendment, in spite of its greater clarity, because it had doubts about a rule based exclusively on the archival concept of "belonging".

60. Mr. LAMAMRA (Algeria) said that he had with regret voted against the Austrian amendment because the use in article 25 of the terminology it employed, read in conjunction with its more pertinent use in article 26, which had a more solid legal basis, might prove a source of confusion.

61. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation had voted against the Austrian amendment and in favour of the International Law Commission's text of article 25. The principal reason for its taking that position was that, if only archives that had belonged or still belonged to the territory passed, certain important archives might be excluded. The International Law Commission's text would include administrative archives relating principally or exclusively to the territory being transferred. That was desirable because in most cases the territory, having been part of the predecessor State, might not have owned archives as such, since all the constituent territories of a State owned the State archives jointly.

62. Mr. SUCHARITKUL (Thailand) said it was apparent that, whatever the precise definition of State archives eventually adopted in article 19, an essential element would be that they were the State archives of the predecessor State. There was thus in the English text of article 25, paragraph 1, an awkward tautology that had been avoided in a similar case in article 11 by referring to the "passing of State property from the predecessor State". The same change should be made in article 25, paragraph 1, with consequential changes in paragraph 2(*a*) and (*b*). The changes were purely a matter of drafting.

63. The CHAIRMAN noted that the Committee of the Whole had concluded its consideration of article 25.

Report by the Chairman of the Working Group on article 19

64. Mr. NAHLIK (Poland), Chairman of the Working Group on article 19, said that the Group had held four meetings, during which it had considered the basic text prepared by the International Law Commission, four written and ten oral amendments and sub-amendments submitted to the Committee of the Whole, as well as a number of amendments proposed during the discussion in the Working Group itself.

65. Most of the wording of the text finally produced by the Group (A/CONF.117/C.1/L.45) had been agreed to by all its members, with the exception of three phrases which had the support of some members only and had therefore been placed between square brackets.

66. Commenting on the text submitted by the Working Group, he said that the first phrase, "For the purposes of the articles of the present Part," presented no difficulty and that the Drafting Committee should ensure that the final wording conformed to the similar definitions contained in articles 8 and 31.

67. After some discussion, the members of the Working Group had agreed to retain the word "documents" contained in the International Law Commission's draft as the essential element of the definition of "State archives". The Group had, like the Commission, considered that the phrase "of whatever kind" covered both the form and the content of the documents, but most members had thought it necessary to refer also to the date of the documents, in order more clearly to indicate that the latter could be both old and recent. The words "produced or received" had been included to show that the article referred both to documents emanating from the activities of any State body and to those produced outside such activities but which were contained in the State archives of the predecessor State. Certain members of the Group, however, had considered the phrase "in the exercise of its functions" superfluous. It had therefore been placed in square brackets in the text. No opposition had been expressed to the words "which, at the date of the succession of States, belonged to the predecessor State according to its internal law". On the other hand, the word "kept" in the original text had been replaced by "preserved", which seemed to be the word used in the terminology relating to archives. The words "directly or under its control" had been placed in square brackets because they had been supported only by a minority of the members of the Group, the others considering them liable to present difficulties of interpretation. The words "as archives" contained in the Commission's text had finally been retained, after an interesting discussion, so as to constitute some limitation, the only one, of the notion to be defined. Finally, even the representatives who had been in favour of an enumeration, whether exhaustive or exemplary, of the purposes to be served by the archives had agreed to replace any such enumeration by the phrase "for whatever purpose" which, however, had been placed between square brackets because some members of the Working Group had maintained that the various purposes to be served by the archives were implicit in the very concept of archives.

68. The CHAIRMAN announced that, in order to allow delegations time to study it, the draft text of article 19 submitted by the Working Group would be discussed at the next meeting.

Statement by the Chairman of the Drafting Committee

69. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that it was as yet too early for that Committee to submit even an interim report in writing, but he wished to report orally on the work it had done so far and to seek further instructions from the Committee of the Whole. That Committee had specifically requested the Drafting Committee to submit a recommendation on the use of the term "State archives" in article 23, taking into account the definition of that term in article 19. A similar problem had not arisen concerning the definition of the term "State property" in article 8, because the International Law Commission's text of article 12 had been carefully prepared so as to avoid use of the term "State property". At the 9th meeting, during the discussion of article 11, the representative of Finland had proposed that the word "from" in the English text should be changed to "of" to bring it into line with the French and Spanish texts. After careful consideration, the Drafting Committee had decided to maintain the word "from", which referred to the movement of the passing of State property from the predecessor State rather than to its possession by that State, which was clearly defined in article 8. The maintenance of the word "from" would involve no change in the French and Spanish texts since the word "*de*" could mean both "from" and "of".

70. A similar problem had arisen during the Drafting Committee's consideration of article 13 regarding the appropriateness of using the expression "State property of the predecessor State" in view of the definition of "State property" which had been adopted in article 8. That question had also arisen in the context of various other draft articles. According to many members of the Drafting Committee, the qualifying phrase "of the predecessor State" could be amended to read "from the predecessor State" and be moved towards the end of the provision as appropriate. Other members of the Drafting Committee had considered such an amendment to be substantive and consequently outside the competence of the Drafting Committee. He therefore requested the Committee of the Whole to authorize the Drafting Committee to submit recommendations on analogous questions involving not only article 13 but also other relevant articles.

71. The CHAIRMAN invited members of the Committee of the Whole to express their views on that matter.

72. Mr. MAAS GEESTERANUS (Netherlands) said that it was the normal task of a drafting committee to check that definitions in a draft convention were used in the correct legal sense throughout the articles. He took the absence of comment in the Committee of the Whole to mean that its members supported the request by the Chairman of the Drafting Committee.

73. Mr. SUCHARIPA (Austria) thanked the Chairman of the Drafting Committee for his valuable report, expressing at the same time his surprise that proceedings in that Committee made it necessary to request special authorization from the Committee of the Whole to consider what he felt to be a typical case of a problem which should be dealt with by a drafting committee.

74. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee of the Whole wished to authorize the Drafting Committee to deal with the problems which had been mentioned by its Chairman.

It was so decided.

The meeting rose at 5.45 p.m.

27th meeting

Tuesday, 22 March 1983, at 10.30 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 19 (State archives) (*concluded*)*

1. The CHAIRMAN said that, without wishing to prejudge the outcome of the Committee's further consideration of article 19, he had the impression that the text suggested by the Working Group (A/CONF.117/C.1/L.45) should meet all the concerns which had been voiced by delegations. The suggested text was consistent with the International Law Commission's text which had however been refined to take account of points raised during the discussion both in the Committee of the Whole and in the Working Group.

2. Mr. de OLIVEIRA (Angola) said that in the earlier discussion on article 19 many delegations had expressed concern lest the primacy of the internal law or the unilateral judgement of the predecessor State limit the meaning of "State archives". His delegation shared that concern. In the absence of a specific rule of international law, it might have been best to define the meaning by using some such formula as "in accordance with the normal practice of States". Even that wording might be too vague and would doubtless open the door to undesirable disputes between States.

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* Resumed from the 20th meeting.

3. The Working Group was to be congratulated on its text which, even though it did not perhaps dispose of all the concerns mentioned, retained the substance of the article proposed by the International Law Commission. His delegation was inclined to view the phrases in square brackets in document A/CONF.117/C.1/L.45 as explanatory comments; they could not be regarded as superfluous but their inclusion in the article would give the impression that too much emphasis had been laid on descriptive matter. They could therefore be dispensed with. The concluding phrase "[for whatever purpose]" should however be retained, for it provided an additional safeguard against possibly wrongful unilateral interpretations.

4. Mr. IRA PLANA (Philippines) considered that the text of the Working Group was well balanced and represented a distinct improvement over the text of the International Law Commission. His delegation could accept the phrase "[in the exercise of its functions]" but considered that the phrases "[directly or under its control]" and "[for whatever purpose]" were unnecessary and might be dropped.

5. Mr. KOLOMA (Mozambique) said that the main objection of his delegation to the original text of the International Law Commission had been to the concluding phrase reading "and had been kept by it as archives". That phrase added to the definition of "State archives" a subjective criterion, namely, the intention of the predecessor State to consider certain documents of whatever date and kind as archives. In the text suggested by the Working Group the phrase in question was simply replaced by another phrase with the same meaning, namely, "and were preserved by it as archives". The suggested text did not, therefore, cure what his delegation considered the main defect of the original text. It was evident that "State archives" were objective in character, existed independently of the State's will, and were determined by the intrinsic nature of the documents themselves. That being so, it was illogical to insist on including in the definition of "State archives" a reference to the will or intention of the State. His delegation considered therefore that it would be wiser to delete the words "[directly or under its control] as archives" from the Working Group's text. If the subjective criterion was retained in the definition of State archives, his delegation would have serious difficulties in voting in its favour.

6. Mr. FAYAD (Syrian Arab Republic) said that his delegation appreciated the efforts made by the Working Group but considered nevertheless that the results of its work did not add to the International Law Commission's text. In particular, the words "[in the exercise of its functions]" added nothing. His delegation therefore shared the views expressed by previous speakers and would prefer a text corresponding more closely to the general view.

7. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had misgivings about the phrase "[in the exercise of its functions]", because it was possible that certain archives might have been collected otherwise than in the exercise of the predecessor State's functions. In addition, the words "as archives", at the end of the text should be deleted, because, read in conjunction with the reference to the internal law of the predecessor State, they would give that State the right to determine what should be regarded as archives. The concluding phrase should therefore read: "preserved by it for whatever purpose".

8. Mr. ROSENSTOCK (United States of America) said that the Working Group had included all delegations which had wished to make suggestions and had been given the task of producing a compromise text. It had fulfilled its mandate. His delegation was therefore distressed to note that some representatives seemed to be doing no more than repeat comments which had been made at an earlier stage in the Committee's proceedings before the Working Group had been established.

9. Mr. TÜRK (Austria) said that his delegation had been a member of the Working Group and, together with the other members, had tried to reach a compromise text acceptable to all. The Working Group had gone as far as it could and it was for the Committee to take a decision. His delegation was not happy with all aspects of the compromise text, and had doubts particularly about the phrase "[directly or under its control]", but would be prepared to accept the text, provided that it was not amended. He proposed that the Committee proceed to take a decision on the text of article 19 as suggested by the Working Group.

10. The CHAIRMAN said that he had been under the impression that all members of the Working Group had accepted the compromise text. The text was based on the draft of the International Law Commission but contained a number of additions. Some of those additions had been approved, but others, namely, those contained in brackets, had not been accepted by all members of the Working Group. The Committee might therefore wish to deal first with the phrases in brackets. If it was not ready to consider those phrases, there would be no alternative but to vote.

11. Mr. NAHLIK (Poland), speaking as Chairman of the Working Group, pointed out that the Working Group had been open-ended. He was surprised that delegations which were expressing objections to the text suggested by the Working Group had not troubled to participate in the Working Group. The members of the Working Group had worked hard to reach a compromise acceptable to all, but it must be recognized that it was not possible to satisfy everybody. He recommended the text to the Committee and saw no alternative to the Chairman's suggestion that it should be put to the vote. He wondered if a vote should not first be taken on the phrases in brackets which had not met with general acceptance. All the rest of the text had been unanimously accepted by the Working Group after a lengthy discussion. To reopen the discussion would therefore be a waste of time.

12. Referring to the doubts expressed regarding the words "as archives", he stressed that what was to be defined was the meaning of "State archives", not merely "archives". The reference to the internal law of the predecessor State was unavoidable, just as in article 8 it had been found unavoidable. A similar approach was necessary in the case of article 19, for the sake of homogeneity. In order to meet the objections of

some delegations, the words "of whatever date" had been added by the Working Group so as to emphasize that documents might be either historical or of very recent date. The phrase "of whatever date and kind" had been inserted in order to cover all types of documents without limitation; the only condition that had to be fulfilled was that the documents must have been kept as archives, in other words as a certain whole and not as isolated documents. Accordingly, he considered that those words should stand.

13. The CHAIRMAN stressed that article 19 was essential for the understanding of Part III of the future convention.

14. Mr. TEPAVITCHAROV (Bulgaria) said that the text suggested by the Working Group represented a serious attempt to improve the definition provided by the International Law Commission. The insertion of the word "date" in the revised definition removed any possible doubt as to the status of so-called "living" archives. His delegation was unconvinced of the necessity for including the three phrases appearing in square brackets and would, on the whole, prefer their deletion; in particular, the phrase "[directly or under its control]" was, on the one hand, unduly restrictive and, on the other hand, open to the interpretation that archives which belonged to the predecessor State but which, for some reason, were not under its control at the date of succession would not be subject to transfer. However, he would agree to the adoption of the Working Group's text incorporating those phrases if a consensus to that effect became apparent in the Committee.

15. Mr. MORSHED (Bangladesh), while welcoming the Working Group's text as a significant step towards a solution, remarked that no definition could be foolproof or completely accurate. Although his delegation considered the phrase "[in the exercise of its functions]" to be unnecessary and would prefer it to be deleted, it was prepared to bow to the majority view and agree to dropping all three sets of square brackets appearing in the revised text.

16. Mr. ABED (Tunisia) said that he would likewise prefer the words "[in the exercise of its functions]" to be deleted for, in his delegation's view, they might give rise to conflicting interpretations. However, he shared the views expressed by the Austrian representative and was prepared to accept the Working Group's text in its entirety.

17. Mr. MNJAMA (Kenya) said that his delegation, which had been the first to propose the deletion of the words "and had been kept by it as archives" from the International Law Commission's text, had nevertheless accepted the inclusion of a similar phrase in the Working Group's text on the understanding that the incorporation of the new phrase "of whatever date and kind" would imply the inclusion of recent records (so-called "living" archives). Some words of explanation by the Expert Consultant would be welcome in that connection.

18. Mr. TÜRK (Austria) associated himself with the remarks made by the representative of Bangladesh. Separate voting on the phrases appearing in square brackets would jeopardize the balance of what was, in essence, a package deal. He was in favour of removing all three sets of square brackets.

19. Mr. HAWAS (Egypt) agreed with those previous speakers who had expressed a preference for the deletion of the phrase "[in the exercise of its functions]", and associated himself with the views of the Bulgarian representative concerning a possible misinterpretation of the phrase "[directly or under its control]". He also endorsed the suggestion made by the representative of Mozambique and, in that connection, reminded the Committee that he had originally been in favour of deleting the phrase "according to its internal law and . . . archives" from the International Law Commission's text, agreeing to the maintenance of the phrase "according to its internal law" only in the light of the explanation supplied by the Expert Consultant at the 5th meeting in connection with article 12. Like other members of the Committee, he was prepared to go along with the majority view of the Working Group's text, but would appreciate some further explanation by the Expert Consultant regarding the phrase "and were preserved by it . . . as archives".

20. Mr. MONNIER (Switzerland) associated himself with the Austrian representative's earlier remarks. The fact that the suggested text was not universally accepted as fully satisfactory was, surely, the hallmark of a good compromise. The text represented a carefully woven fabric which should not be unravelled. He suggested that the revised version of article 19 should, like several articles previously disposed of, be adopted without a vote and referred to the Drafting Committee. If any delegation insisted on a vote being taken, the text should be voted upon as a whole and, if it was rejected, the Committee should fall back upon the original text drafted by the International Law Commission.

21. Mr. TSHITAMBWE (Zaire) endorsed the suggestions just made as well as the views expressed by the Austrian representative.

22. Mr. BEDJAOUI (Expert Consultant) said that the Working Group's text represented a most useful compromise which, without fully satisfying anyone, appeared to be acceptable to all. The newly added phrases and their precise position in the text were a matter of delicate balance and he felt that to comment on them separately would serve no useful purpose at that stage. The text as a whole was an acceptable piece of work which did honour to the Working Group and to the Committee itself.

23. The CHAIRMAN invited the Committee to agree, without a vote, to the deletion of the square brackets appearing in document A/CONF.117/C.1/L.45.

It was so agreed.

The text of article 19 as suggested by the Working Group was adopted and referred to the Drafting Committee.

24. Mr. RASUL (Pakistan) said his delegation had supported the text suggested by the Working Group, without the words in square brackets, as an improvement over the article proposed by the International Law Commission. His delegation understood the reference to the internal law of the predecessor State as relating only to the ownership of the State archives in question and not to their preservation. It understood the question of preservation in the light of the statement made by the United Kingdom representative at an

earlier point in the debate to the effect that a file became part of State archives immediately upon being opened.

25. Mr. HAWAS (Egypt) said that his delegation had been happy to join in the consensus on the Working Group's text of article 19 and to contribute to the compromise which that text represented.

26. He referred to the reservation formulated earlier by his delegation regarding the words "preserved by it . . . as archives". It was important that that phrase should not be used as a criterion for a subjective determination of which State archives passed to the successor State.

27. His acceptance of the words "according to its internal law" was based on the explanations previously provided by the Expert Consultant with regard to the analogous expression in article 12.

28. Mr. MURAKAMI (Japan) said that his delegation had joined in the consensus on the Working Group's text even though it did not find it fully acceptable. His delegation maintained its reservation with respect to the words "or under its control", which tended to expand the scope of the definition of State archives to an unreasonable degree.

29. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation was glad that it had been possible to find common ground and to establish a generally acceptable form of article 19. That was a hopeful sign for the future real progress of the Conference.

30. His delegation understood the words "preserved by it . . . as archives" as referring, by juridical necessity, to the internal law of the predecessor State.

31. Ms. LUHULIMA (Indonesia) said that she had supported the Working Group's text in spite of her delegation's serious doubts regarding the retention of the words "as archives", which tended to imply that a sizeable category of recent State documentary material might not be covered by the provision. She welcomed the addition of the words "of whatever date", which she understood as including such documents, a point which had been clarified by the Chairman of the Working Group.

32. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation could accept the text of article 19 as proposed by the Working Group with the exception of the words "as archives", which seemed to imply the indirect application of the internal law of the predecessor State.

33. Mr. LAMAMRA (Algeria) said that he was pleased that the Committee had been able to adopt the revised text of article 19 without a vote. His delegation had joined in the decision in a spirit of compromise. The text represented an improvement over the Commission's version. He particularly welcomed the words "of whatever date", which clarified the question of identifying which documents qualified as archives, and the phrases "produced or received by the predecessor State" and "directly or under its control". The reference to documents being kept as archives "for whatever purpose" was also useful.

34. His delegation interpreted the reference to the internal law of the predecessor State as applying exclusively to the question of ownership of archives.

35. Mr. KIRK (United Kingdom) said that, while regretting that its own amendment (A/CONF.117/C.1/L.20) to article 19 had not been accepted, his delegation had supported the adoption of the Working Group's text for the sake of constructive compromise. He agreed with the point made by the representative of the Federal Republic of Germany that the phrase "preserved by it . . . as archives" must of course be interpreted in accordance with the internal law of the predecessor State.

36. Mr. MNJAMA (Kenya) said that his delegation had been happy to approve the adoption of the Working Group's draft of article 19 in the light of the explanation provided by the Expert Consultant at the 19th meeting and on the understanding that, as emphasized by the representative of the United Kingdom in an earlier statement, a file became a part of State archives on the date on which it was opened.

37. Mr. MIKULKA (Czechoslovakia) said that, for the sake of progress in the Committee's work, his delegation had not opposed the adoption of article 19 as drafted by the Working Group. However, it continued to find some of the wording of the article unsatisfactory. The passages which had been bracketed, far from improving the definition, would be likely to lead to future difficulties of interpretation. Nor did the definition dispose of the inconsistency, mentioned at the 23rd meeting by the representative of the Netherlands during the debate on article 23, between the general notion of State archives and the condition laid down in the definition that those archives must have belonged to a specific State, namely, the predecessor State. The definition in article 19 as adopted did not cover all archives in general but covered only that specific category, a serious limitation which would cause disputes whenever the article was applied to cases involving the State archives of a State other than the predecessor State, as in the case of those of a third State, covered by article 23, or by article 28, paragraph 4, which implicitly covered State archives of the successor State also.

38. Mr. FAYAD (Syrian Arab Republic) said that his delegation had accepted the Working Group's draft of article 19 because it wished to save the Committee's time. However it continued to consider the text proposed by the International Law Commission as more comprehensive and as providing a better and more readily usable definition of State archives.

39. Mr. PIRIS (France) welcomed the adoption of article 19 and expressed his thanks to the Working Group for its constructive efforts.

40. His delegation endorsed the interpretations placed on the provision by the representatives of the United Kingdom and the Federal Republic of Germany. The comments made by the representatives of Czechoslovakia and the Netherlands on article 23 at the 24th meeting might usefully be considered by the Drafting Committee.

41. Mr. MONNIER (Switzerland) said that, like other representatives, he would have preferred the text without the words contained within square brackets, especially those at the end of the article, since he took the view that those words obscured the clarity of the definition rather than adding anything constructive to

it. However, he was happy to endorse the work of the Working Group and to accept the article in a spirit of compromise and hoped that that spirit would continue to guide the work of the Conference on future matters.

42. Mr. NATHAN (Israel) said that his delegation accepted the Working Group's text as a compromise but would have preferred the phrase contained in the square brackets to be deleted, regarding them as either dangerously vague and therefore likely to lead to disputes in the future or superfluous because already implicit in the original article as drafted by the International Law Commission.

43. Mr. SKIBSTED (Denmark) said that his delegation regarded the text prepared by the Working Group as a satisfactory compromise. It was effective in serving what should be both the main purpose of the definition of "State archives" and the purpose of the draft convention as a whole, namely, that of protecting the interests of both predecessor and successor States.

44. Mrs. OLIVEROS (Argentina) commended the Working Group on its constructive efforts. Her delegation had joined in the consensus on the revised text in a spirit of compromise.

45. It was her delegation's understanding that the reference to documents "received" by the predecessor State included documents acquired by that State and that the words "preserved by it . . . as archives" meant that the predecessor State would in no circumstances be entitled to remove archives or documents which formed part of the so-called "living archives" and were necessary for the purpose of sound administration.

46. Mr. NARINTHRANGURA (Thailand) said that, in his delegation's view, the Working Group's version of the definition in article 19 embodied a sound principle and a generally acceptable compromise and applied to all Parts of the draft convention.

47. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation had acceded to the Committee's wish to adopt the definition produced by the Working Group in a spirit of compromise, while feeling that some of the words placed in brackets were undesirable. For example, the words "in the exercise of its functions" might be taken as excluding certain documents of historical value, and the expression "directly or under its control" was unnecessary, because the documents referred to would qualify as archives as soon as they were preserved by the predecessor State.

48. For reasons which it had stated at the 19th meeting during the debate before the article had been referred to the Working Group, her delegation regretted that the words "as archives" had been retained at the end of the definition.

49. Mr. ECONOMIDES (Greece) said that his delegation had originally wished to speak before the vote on article 19 in order to state its opposition to the inclusion of the phrases contained in square brackets. He considered that the definition ultimately adopted by the Committee was in effect that originally proposed by the International Law Commission, based on the concepts of ownership and the "keeping" of archives by the predecessor States.

50. Mr. BARRERO-STAHL (Mexico) said that his delegation had accepted the text as drafted by the Working Group as a compromise but would have preferred the words contained in the first two sets of square brackets to be dropped. It had been in favour, however, of retaining the phrase "for whatever purpose" because it represented a safeguard for the right of peoples to keep or recover their cultural heritage; his delegation had already expressed its concern regarding the scope of the definition "all documents of whatever date and kind" (18th meeting).

51. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had joined in the consensus in a spirit of compromise, but reluctantly. He interpreted the phrase "in the exercise of its functions" to mean any functions whatsoever of the predecessor State and not only those related to the territory of the successor State before the succession took place. He interpreted the expression "according to its internal law" not as determining the nature of those archives which could be considered State archives but as referring solely to the ownership of the archives by the predecessor State.

52. Mr. CONSTANTIN (Romania) supported the views of the representative of Mexico; he would have preferred to see the text adopted without the phrases contained in the first and second sets of square brackets.

53. Mr. ROSPIGLIOSI (Peru) said that there appeared to have been a misunderstanding. At the time of the adoption of article 19 as suggested by the Working Group, he had understood that it had been the Committee's decision to delete not only the three sets of square brackets but also the words contained therein. Those words weakened the definition of "State archives", which was otherwise generally well presented in the Working Group's version.

54. Mr. PAREDES (Ecuador) said that he agreed with the representative of Peru that, at the time of the decision on article 19, there had been some confusion. He had understood that it had been the Committee's intention to delete the words in square brackets and not just the brackets themselves. It had been on that basis that his delegation had been prepared to accept the text.

55. Mr. RASUL (Pakistan) asked the Chairman to clarify the position. He also had understood the Chairman's proposal at the time of the decision on draft article 19 as meaning that the words in the square brackets would be deleted together with the brackets.

56. The CHAIRMAN said that he deeply regretted the misunderstanding but noted that it appeared clear from the comments of most delegations that the implications of the decision had been generally understood. He had suggested that a decision should be taken on the complete text as proposed by the Working Group, with the sole deletion of the three sets of square brackets. The words in the brackets had been retained, and it was on that basis that the Committee had taken its decision.

57. Mr. ECONOMIDES (Greece) observed that he had not understood the decision in that way but that he was still willing to concur in the adoption of article 19. However, he wished to explain his delegation's position on the three passages in brackets.

58. The phrase "in the exercise of its functions" was superfluous and might cast doubt on the very concept of

State archives. The idea behind the words "directly under its control" was, in his view, already implicit in the draft article and therefore those words merely added an unnecessary detail. Lastly, the intention behind the expression "for whatever purpose", although largely implicit in the article, might in some extreme cases be at variance with State practice in the field.

59. Mr. BOSCO (Italy) said that his delegation had joined in the consensus even though it would have preferred only the first bracketed phrase to be retained; had a separate vote been taken on the three phrases in brackets, he would have voted in favour of the first and against the second and the third. He might also have been prepared to accept the text without any of the bracketed words or phrases.

60. Mr. MORSHED (Bangladesh) said that his delegation had clearly understood that it had been the wish of the Committee to delete only the square brackets and not the words contained in them. He had already made it plain that his delegation had serious reservations with regard to the bracketed phrases and would have welcomed a separate vote on them. However, for the sake of the spirit of unanimity, he had decided to accept the entire text.

61. Mr. JOMARD (Iraq) said that, since he had not been present at the time of the decision on article 19, he reserved his delegation's right to submit further amendments and to call for a second vote on the article when it came to be considered by the plenary Conference.

Article 26 (Newly independent State)

62. The CHAIRMAN drew attention to amendments to article 26 submitted by Nigeria (A/CONF.117/C.1/L.40) and Egypt (A/CONF.117/C.1/L.46).

63. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation's amendment to article 26 concerned only paragraph 7.

64. In her delegation's view, article 26 was a very important article and the International Law Commission in its commentary had acknowledged its importance. A similarity existed between article 26 and article 14, which the Committee had adopted without amendment. Nevertheless, as was stressed in the commentary, particularly in paragraphs (3), (27) and (30), archives, unlike the material or physical State property which was the subject of article 14, constituted an essential element in the very existence of a people. The numerous resolutions adopted by the General Assembly of the United Nations, the General Conference of UNESCO and the summit conference of Heads of State or Government of Non-Aligned Countries cited in the commentary indicated the importance attached by the world community and especially by the newly independent States to the subject.

65. Paragraph 7 of article 26 in the Commission's draft merely stated the undesirability of agreements concluded between the predecessor State and the newly independent State which infringed the right of peoples of newly independent States to development, to information about their history and to their cultural heritage. The question then arose what would happen if such agreements, often concluded even before the granting of independence, infringed the rights set out in article 26. Would they be merely unenforceable, or would they be voidable, or void *ab initio*? In her delegation's view such agreements should be regarded as void *ab initio*. Archives were a very important aspect of the national cultural heritage, and the international community should strengthen the rules of international law relating to the passage of what might be termed "cultural property" to national communities. In many cases such archives had existed before the colonial period and hence the predecessor State should not be given any excuse to deny the people of newly independent States their cultural property. Moral statements about the undesirability of agreements infringing the rights of the people were not enough: the Conference should clearly enunciate and strengthen the relevant rules of law.

66. It might be argued that the successor State should be allowed to choose whether or not to implement such an agreement after becoming a sovereign State and to rely on the terms of article 26 if the agreement in fact contravened the principle. However her delegation believed that in most cases of succession a newly independent State remained heavily dependent upon the predecessor State for economic reasons. It would therefore be difficult for the successor State to refuse or reject the agreement even if it contravened the principle set out in article 26, paragraph 7.

67. It might also be argued that article 26 ought not to be amended since article 14 had been adopted as proposed by the International Law Commission. However, the Commission itself had recognized the importance of article 26, which, although closely modelled on article 14, also contained some new elements. The fact that archives were covered by a separate part of the draft convention rather than treated as part and parcel of movable State property also reflected the significance accorded by the Commission to the subject. Archives indeed belonged to a special category of matters that passed in the event of a succession of States.

68. In proposing its amendment the Nigerian delegation had taken into consideration the fact that the whole of article 26 as drafted was founded on the time-honoured principles of equity and the universally recognized rights of a people to its cultural heritage. She appealed to the Committee to lend further weight to those principles by supporting her delegation's amendment.

69. Mr. HAWAS (Egypt) said that the object of his delegation's amendment to article 26 was to ensure that, in the absence of an agreement, a newly independent State should receive at least the same treatment as that provided for in article 25, paragraph 2(*b*) in the case of the transfer of part of the territory of a State. It was for that reason that his delegation proposed the text for a new subparagraph (*c*) to be inserted in paragraph 1 of article 26.

70. He added that his delegation supported the Nigerian amendment, which would clarify the text, and suggested that that amendment should be referred to the Drafting Committee.

71. Mrs. THAKORE (India) said that the International Law Commission was to be congratulated upon its treatment of newly independent States as a special

category in its draft. That approach was a major contribution to the progressive development of international law. Article 26 was closely modelled on article 14, on State property. In her delegation's view, it was a very important article.

72. Paragraph 7 of the article, which deserved special praise, laid down a peremptory rule that agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State should not infringe the right of the peoples of those States to development, to information about their history, and to their cultural heritage.

73. The right to development referred to social, cultural, political and other aspects of development. The right to information denoted the right of peoples to be informed of their own history and existed *per se*, independently of the right of ownership of the archives. The right to cultural heritage referred to archives as constituting an essential part of the heritage of a national community.

74. The three major rights mentioned in paragraph 7 were of crucial importance to the newly independent States.

75. In its commentary to article 26, the Commission had commendably drawn attention to numerous resolutions on the subject adopted by UNESCO, the General Assembly of the United Nations, the Conferences of Heads of State or Government of the Non-Aligned Countries, the Seventeenth International Round Table Conference on Archives and the plea of the Director-General of UNESCO, calling upon metropolitan Powers to return cultural property, objects of art, archives and other irreplaceable masterpieces to the countries of their origin and to conclude bilateral agreements or settle disputes by negotiation. The practical measures suggested by the Commission and the resolutions cited, if implemented in good faith, would go a long way to achieve that end.

76. Archives were the soul, the conscience and the memory of peoples and the foundation of the national identity. They constituted an important part of the cultural heritage of nations. Hence the imperative need to formalize the principle of restitution, pure and simple.

77. Her delegation supported in principle the text of article 26 as proposed by the Commission. Paragraphs 2, 4 and 7 of the article in particular would provide directions that would benefit newly independent States. Her delegation also viewed with favour the Nigerian amendment to paragraph 7 but was not very clear as to the scope of the new subparagraph (*c*) of paragraph 1 proposed by the Egyptian delegation.

The meeting rose at 1 p.m.

28th meeting

Tuesday, 22 March 1983, at 3.15 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 26 (Newly independent State) (*continued*)

1. Mr. MARCHAHA (Syrian Arab Republic) said that the comments made at the 14th and 16th meetings by his delegation in connection with article 14 concerning the necessity of formulating rules to be applied exclusively to newly independent States were also relevant to article 26. The International Law Commission's draft of article 26 had his delegation's support because it took into consideration all the requirements of such States. His delegation also supported the Nigerian amendment (A/CONF.117/C.1/L.40), which improved the clarity of paragraph 7 and strengthened the connection with *jus cogens*.

2. Mr. COUTINHO (Brazil) said that his delegation supported the International Law Commission's text of article 26. However, in its view, the reference in paragraph 7 to the right of people to information about their history and their cultural heritage should apply to all cases of succession of States and not only to the case of newly independent States. Although the International Law Commission had pointed out in paragraph (32) of its commentary on article 14, paragraph 4, that the principle of permanent sovereignty over wealth and natural resources applied to every people, it had considered it particularly necessary to stress that principle in connection with newly independent States. The provisions contained in article 14, paragraph 4, and in article 26, paragraph 7, should, he felt, be included in a separate article among the General provisions of Part I. His delegation had submitted an amendment to that effect (A/CONF.117/C.1/L.43) regarding the insertion of a new article 6 *bis* after article 6 which it would introduce when the General provisions were examined.

3. Mr. EDWARDS (United Kingdom) said that the provisions for archives in article 26 were similar to those for property in article 14. It was therefore not surprising that his delegation experienced the same kind of difficulties with both articles. As it had explained at the 5th and 13th meetings during the discussion of articles 8 and 14, the International Law Commission's proposals simply did not fit the practice which the United Kingdom and, he believed, other countries had followed in such matters. As the government of a United Kingdom dependent territory proceeded towards independence, it kept its own archives, which never formed part of the public records of the

United Kingdom. On independence, the newly independent government succeeded to all the archives of its predecessor. Thus the archives in the hands of the new government were comprehensive and that government was therefore able to carry out effectively the administration of the newly independent State.

4. In addition to establishing and maintaining local dependent territory archives during the years leading up to independence, his country had provided training courses for officials working in the local administration and in many cases had subsequently provided technical assistance to the newly independent States in the form of qualified archivists and funds for improving the arrangement, housing and accessibility of local archive collections.

5. The United Kingdom delegation also had a number of specific difficulties with article 26 as proposed by the International Law Commission. In paragraph 1, subparagraph (*a*), the expression "archives having belonged to the territory to which the succession of States relates" was used. The presence of similar ambiguous phraseology in article 14, subparagrahs 1(*b*) and (*e*) had led his delegation to propose alternative wording (A/CONF.117/C.1/L.19). The expression "normal administration of the territory" in paragraph 1(*b*) was likewise vague and that subparagraph should be redrafted along the lines suggested for article 14, paragraph 1(*c*), in the United Kingdom amendment to that article. Paragraphs 2 and 3 were generally acceptable, provided it was made clear that they should be interpreted in accordance with the internal law of the predecessor State. Paragraph 4 was acceptable in principle, apart from the repetition of the vague expression "having belonged to the territory to which the succession of States relates", but there might well be severe limitations on its practical implementation in view of the wide scope of the term "archives" as described in the International Law Commission's commentary on article 19. Many of the items mentioned in that commentary might be in private ownership and in such a case the United Kingdom would not be able to enforce their return to the newly independent State.

6. In article 26, paragraph 7, as in article 14, paragraph 4, the International Law Commission seemed to be suggesting the existence of some sort of *jus cogens* which, however laudable the underlying principle, should not be allowed to cast doubt upon agreements concluded between predecessor and successor States in respect of archives. The representative of the Federal Republic of Germany had, at the 13th meeting, explained the legal difficulties involved, during the discussion on article 14, paragraph 4. Those difficulties applied also in the case of article 26, paragraph 7. For the same reasons, the United Kingdom delegation could not support the Nigerian amendment to that paragraph.

7. In his view, article 26 should be rearranged in the way suggested by his delegation for article 14, so that agreement between the States concerned constituted the primary rule and the remainder of the article contained residual rules.

8. His delegation had not proposed specific amendments to article 26 in view of the fact that those delegations which had opposed the United Kingdom amendments of a similar nature to article 14 had not been able to indicate any movement at all towards accepting them. When the International Law Commission's text of article 26 was put to the vote, his delegation would therefore be obliged to vote against it.

9. Mr. MAAS GEESTERANUS (Netherlands) said that the idea of including in the draft convention a separate article on the passing of State archives in the case of newly independent States was acceptable in principle. The first six paragraphs of article 26, while capable of improvement, were also on the whole acceptable. His delegation wondered whether the essence of the new subparagraph 1(*c*) proposed by the Egyptian delegation was not already included in paragraph 2 in the International Law Commission's text.

10. Paragraph 7, on the other hand, would create many legal difficulties for those States and courts which would have to apply its provisions. It referred to three major rights which were assigned to the peoples of both the predecessor and successor States. In so far as the paragraph could be interpreted as outlining a programme of action by which States should be guided in their negotiations concerning the apportionment of State archives, his delegation was in full agreement with the desirability of permitting peoples full access to information about their history and cultural heritage. However, the wording and the proposed place of paragraph 7 in the draft convention seemed to imply that it stated a rule of law and even that reference was being made to already existing rules of customary international law. It could indeed, in the opinion of his delegation, be argued that the right to development was in the process of evolving into a principle of international law. However, neither that right nor the other rights mentioned in paragraph 7 had as yet been defined in any general international convention. Furthermore, the paragraph itself did not contain the necessary elements to assist in understanding the exact scope of those rights. It was the duty of the Conference to avoid such a legally unacceptable situation. His delegation had been unable to devise a satisfactory text for paragraph 7. The amendment to that paragraph proposed by Nigeria was also unacceptable to his delegation. He would therefore prefer to see the paragraph deleted.

11. A possible solution to the difficulty might be the adoption of the Brazilian proposal to include in the draft convention a new article drafted on the lines of article 13 of the 1978 Vienna Convention on Succession of States in Respect of Treaties,[1] to replace both article 26, paragraph 7, and article 14, paragraph 4.

12. He formally proposed that a separate vote should be taken on paragraph 7. If that paragraph were deleted, the rest of the article would be acceptable to his delegation.

13. Mr. ROSENSTOCK (United States of America) said that article 26, like article 14, was unnecessary. His delegation's comments on article 14 at the 15th meeting also applied to article 26. With a sufficient will to find

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[1] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

common ground, the problems encountered with paragraphs 1 to 6 could be remedied. Paragraph 7 raised the issue whether there was desire for a convention covering what should reasonably be covered in a convention on succession of States or whether some delegations would insist on using the present draft convention as an opportunity for embodying formulations not previously included in such instruments. A convention on succession which included unnecessary and highly political provisions would not achieve the general acceptance that was essential if the instrument was to make the desired contribution to international law. Thus the entire process called for by Article 13 of the Charter of the United Nations would be jeopardized. Paragraph 7 of the present draft article 26 raised extraneous issues and it did not state existing law, as was abundantly clear from the International Law Commission's commentary, which provided evidence of an attempt to assimilate a right without legal basis to the treatment accorded to *jus cogens*.

14. His country was not involved in the question at issue either as a predecessor State or as a successor State. It was prepared to be flexible and to assist in bridging gaps between States directly concerned in order to achieve a successful effort at codification. It was not, however, prepared to make major concessions on irrelevant matters such as those dealt with in articles 14, paragraph 4, 26, paragraph 7, and 36, paragraph 2. He therefore urged reconsideration of the necessity of including those provisions in the draft convention.

15. The Nigerian amendment to article 26, paragraph 7, was not helpful, in his view, and he also doubted the usefulness of the Brazilian suggestion of a new article 6 *bis* in Part I.

16. Mr. KADIRI (Morocco) said that the act of political decolonization did not resolve all the problems inherited from the colonial period. Many painful issues connected with the succession of States often remained pending for years after the accession to political independence.

17. Some appeared to think that the Conference was formulating transitional rules relating essentially to newly independent States at a time when the transitional period itself was almost at an end. Such was not the case. The new rules which the Conference would establish, even if not legally impeccable, would guide States in their conduct of negotiations. The close link between the 1978 Vienna Convention on the Succession of States in Respect of Treaties and the draft convention under discussion also militated in favour of the inclusion in the latter of provisions relating to newly independent States. The draft convention certainly had a declaratory aspect, but it also contained material that contributed to the progressive development of law.

18. Referring to the text of article 26, he agreed with the International Law Commission that it was scarcely realistic for a newly independent State to expect to obtain the immediate transfer of all the archives associated with the rule of the predecessor State, but it was contrary to equity that the newly independent State should be deprived of those documents which were also of interest to it. The evidence mentioned in paragraph 3 of article 26 was particularly important in the event of disputes between the newly independent State and a third State relating to part of the former's territory or to its frontiers. His delegation was also in favour of the obligation which paragraph 4 laid on a predecessor State to co-operate in efforts to recover archives that, as was often the case, had been dispersed during the period of dependence. That obligation was associated with a concomitant obligation to locate and sort the archive collections before passing them to the successor State, a procedure which was rendered more difficult by the fact that the archives of most importance from the viewpoint of the newly independent State were sometimes removed by the predecessor State before the accession to independence and by the fact that the predecessor State was sometimes reluctant to transfer such archives to the successor State and therefore did not reveal their existence. The predecessor State must discharge its obligation to co-operate in good faith.

19. Finally, he noted with interest that, in paragraph 7, the International Law Commission had elevated the protection of certain inalienable rights to the status of a positive norm of international law. The importance of those rights had been stressed in various international forums, particularly in the recent work of UNESCO and in the resolutions adopted at various meetings of the Heads of State or Government of the Non-Aligned Countries. The International Law Commission had not, however, ignored the obligation to negotiate. That principle was well established in international jurisprudence, in particular in the North Sea Continental Shelf case[2] where the International Court of Justice had held that the parties were required to enter into negotiation with a view to reaching an agreement and that they had an obligation to conduct themselves in such a way that the negotiation would be meaningful—which would not be the case if one of the parties insisted on maintaining its position without contemplating any concession.

20. Mr. PHAM GIANG (Viet Nam) said that his delegation fully supported the International Law Commission's text of article 26. In the past, dependent peoples had been treated as objects of international law. They had had no rights over either the archives belonging to them before the colonial period or those relating to the colonial administration. Now that those peoples were recovering their national identity, such archives should pass to them automatically without prior agreement between the former colonial power and the ex-colony. The archives were of fundamental importance to the newly independent State for the efficient administration of the territory. It was from that standpoint that his delegation read paragraph 1 of the article. Paragraph 3 was another important provision, in view of the disputes which many newly independent States had had over frontiers with third States or other newly independent States, largely owing to the confusion in which the predecessor State had left the relevant archives. Predecessor States were in a position to clear up disputed

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[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3.

points from their vast accumulation of archives. His delegation therefore endorsed the formulation of paragraph 3 and the judicious observations in paragraphs (20) to (22) of the International Law Commission's commentary on article 26.

21. His delegation also approved paragraphs 2 and 4 of article 26, particularly the obligation placed on the predecessor State to co-operate in recovering historical objects and *objets d'arts*, associated with the national identity of newly independent States, which had been dispersed during the colonial period. Paragraph 7 opened up the way for the States concerned to conclude agreements, provided that they did not infringe certain rights of the peoples of the newly independent States. He congratulated the International Law Commission on producing a text of historic significance.

22. In conclusion, he said that he supported the Nigerian amendment which strengthened the formulation of paragraph 7. On preliminary examination of the Egyptian amendment, he was also inclined to favour its adoption.

23. Mr. LEITE (Portugal) said that his delegation supported neither the Egyptian nor the Nigerian amendments. The Egyptian amendment attempted to make it a duty of the predecessor State to pass part of its own archives to the successor State, which was unacceptable, and the Nigerian amendment undermined the principle of State sovereignty, which was equally unacceptable.

24. Mr. KEROUAZ (Algeria) said that article 26 was the counterpart of articles 14 and 36 and laid down a series of rules in respect of State archives to cover the case of newly independent States. The International Law Commission had assessed the newly acquired rights of such States, which had already been defined by the United Nations and other international organizations over the past two decades and represented full rights in contemporary international law. The Commission had removed all doubts regarding the ownership of archives in the case of newly independent States, acknowledging that they were the property of the successor State and not of the predecessor State, since they belonged to the territory to which the succession related or were acquired in the course of its existence. It had also acknowledged that archives compiled prior to colonial rule were without doubt the property of the newly independent State, and that there had to be a regular transmission of archives from the predecessor State to the newly independent State.

25. The International Law Commission had also acknowledged that access to all archives by the newly independent State had to be ensured, and had therefore invited the States parties to the succession to reach an agreement on the joint use of those archives, based on understanding, equity and mutual interest. Paragraph 2 of the draft article proposed by the Commission recognized the obligation to co-operate on a mutually advantageous basis. However, while such co-operation was both desirable and feasible, it might not come about, for a number of reasons; hence the necessity for the Egyptian amendment which called for the insertion of a new subparagraph (*c*) in paragraph 1.

26. In line with the spirit of article 14, paragraph 7 of article 26 made reference to the inalienable threefold right to development, to information and to cultural heritage, which had been recognized and enshrined by the United Nations and other bodies in numerous resolutions. Archives were the permanent elements of a country's cultural heritage and as such were part of its cultural wealth. To deprive a people of the ownership of archives, therefore, was to destroy the memory of that people.

27. The International Law Commission, in addition to calling for an agreement between the States parties to the succession, had probably also been aiming to eliminate the after-effects of colonization and the resultant expropriation of their cultural heritage. The Algerian delegation considered that the high priority given by the United Nations and other international organizations to the question of the preservation and restitution of cultural property to its legitimate owners was fully justified. The Fifth Conference of Heads of State or Government of the Non-Aligned Countries, held in Colombo in 1976, had considered such restitution to be a condition for dialogue and improved international relations. However, the text of article 26 did not fully reflect the concerns and the claims of the newly independent States. The Berne Convention of 1886 on the protection of literature and works of art and that of 1890 on the protection of artistic property both acknowledged that, if an agreement concluded between States infringed the inalienable rights of one of those States to its cultural property, it should be considered null and void. A similar formula was embodied in many other, more recent, international instruments such as the Brussels and Rome treaties, the treaty between France and Italy and the London Declaration of 1943. In the light of those examples, his delegation regarded the Nigerian amendment as fully justified.

28. Mr. de OLIVEIRA (Angola) said that his delegation fully supported article 26 as drafted by the International Law Commission. As a newly independent State Angola was grateful to the Commission for having proposed such a just and effective provision to protect the legitimate interests of countries which had formerly been dominated and exploited. It was an excellent example of the concern contemporary international law should have to rectify the inequalities of so-called classical international law.

29. The Angolan delegation fully supported the Nigerian amendment. The International Law Commission's commentary on article 14 indicated that some members of the Commission had been in favour of sanctioning any violation of fundamental principles by making agreements null and void *ab initio*. To render agreements null and void *ab initio* and *ope legis*, particularly when they affected fundamental rights such as the right of peoples to development, information and their cultural heritage, was a perfectly reasonable and just solution, and in line with the progressive development of international law. It was reasonable therefore to conclude that, in the case of agreements which were prejudicial to such basic rights, there was no equality of will, and with such a lack of equality *de jure* and *de facto* there did not exist any real agreement.

30. The Angolan delegation also supported the Egyptian amendment and considered that it improved the original text by covering cases of succession of States which also needed to be taken into account.

31. Mr. MUCHUI (Kenya) said that, since article 26 was based on the same reasoning as article 14, his delegation's comments at the 14th meeting on the latter applied *mutatis mutandis* to article 26. Both article 14 and article 26 constituted landmarks in the progressive development and codification of international law, for which the International Law Commission was to be congratulated.

32. The Nigerian amendment to paragraph 7 of article 26 restated an important principle of international law, namely the inviolable right of a people to development, to information about its history and to its cultural heritage. The inviolability of those rights was beyond dispute. Paragraph 7, as it stood, provided that any agreement concluded between a predecessor State and the newly independent State with regard to State archives should not infringe or violate those inviolable rights. However the text contained no explicit provision concerning cases in which such agreements did infringe or violate those rights. The only logical consequence of such infringement was to render the agreements null and void *ab initio*. The Nigerian amendment sought to make that sanction explicit, and for that reason Kenya fully supported it.

33. The Egyptian amendment (A/CONF.117/C.1/L.46) contained a provision similar to one in article 25 in respect of succession in the case of transfer of part of the territory of a State. He saw no reason why the same provision should not apply in respect of succession in the case of newly independent States. According to article 26, the only archives which passed automatically to a successor State were those which belonged to the territory concerned before independence and those which formed part of the normal administration of the territory to which the succession related. There was, however, another category of archives, those which related exclusively or principally to the territory subject to succession, which did not fall into the categories covered by paragraph 1(*a*) or (*b*) of the article and which therefore did not pass automatically from the predecessor State to the successor State. He thanked the Egyptian delegation for drawing the Committee's attention to that gap in article 6 and expressed his full support for the Egyptian amendment.

34. The United Kingdom delegation had considered paragraph 4 of article 26 to be vague. In his delegation's view, that paragraph was crystal clear. It imposed on the predecessor State the very important and vital obligation to co-operate with the successor State in the latter's efforts to retrieve those archives which rightly belonged to it but which had been dispersed during dependence. In Kenya's experience there had been very little co-operation on the part of the predecessor State and such co-operation as there had been had been very selective, in the sense that the archives and information passed had been carefully chosen. In some cases co-operation had been totally lacking. The Kenyan delegation therefore commended the International Law Commission for having recognized that problem and having sought to resolve it.

35. Mr. AMANULLAH (Indonesia) said that, in general, his delegation had no difficulty with article 26 as drafted by the International Law Commission. By using the term "archives" rather than "State archives" in that article the Commission had intended to include the historical archives of the pre-colonial period of the territory concerned. Paragraph 3 stipulated that the predecessor State should provide the newly independent State with the "best available evidence" from the State archives. In paragraph (21) of its commentary, the Commission had stated that the best available evidence meant either the originals or reproductions thereof. His delegation held the view that the "best available evidence" should mean the originals in the case of archives to be used as proof, but it could accept the term "best available evidence" as meaning reproductions in the case of archives used simply as a source of information.

36. Mr. OESTERHELT (Federal Republic of Germany) said that the Nigerian amendment to paragraph 7 answered one of the questions raised by his delegation during the discussion of article 14, paragraph 4, which had not received a complete and fully satisfactory answer. However, the other question, that of interpretation, remained. His delegation took Nigeria's amendment to mean that the legal consequence of an infringement of paragraph 7 was to be the immediate invalidity of the agreement without the need to await denunciation from either side, in other words nullity *ab initio*. Such invalidity would be nullity *inter partes*, as contracted between the parties to the convention with effect only for the parties, and not nullity on other grounds, or with effects in other fields of application.

37. States were in principle free to agree to treaties or treaty clauses which under certain circumstances would invalidate the acts which they performed. States might or might not be willing to restrict their own sovereign treaty-making power, but there was no doubt that they could do so if they so wished. In that narrow respect, therefore, the Nigerian amendment caused his delegation no difficulty, even though the limitations placed upon the treaty-making powers of States went very far indeed. However, nullity, as foreseen by the amendment, was not the only conceivable form of legal reaction to remedy the deficiencies of an agreement, although it was certainly the most severe sanction that could possibly be imposed in that it overruled the express will and intention of the parties to an agreement freely and willingly concluded between them. Nullity should therefore be used only as a last resort in cases where the parties were unable to reach a fair and balanced agreement by any other legal means, and it should be employed only when the prerequisites were very clear.

38. Two questions then arose. The first was whether the nullity provided for in the Nigerian amendment was the only conceivable possibility, or whether there were other forms of legal reaction which would ensure that the rights and interests of the newly independent State were efficiently respected. Would not a right to vitiate the agreement or to have it revised, for example, better reflect the State's intention to regulate the passing of archives on agreed terms than an invalidity *ab initio*, which might be effective even against the will of both

parties in a given case? Secondly, given that nullity was the most severe sanction, the cases to which it might apply had to be pertinent and defined in such a way as to eliminate any uncertainty about its entry into effect. According to paragraph 7, an infringement of the "right . . . to development" made the agreement invalid. That so-called right to development was one of the more controversial items discussed in other forums, particularly the Commission on Human Rights and the General Assembly of the United Nations. Part of the controversy stemmed from the fact that a clear concept of the scope, content and limits of that right had not yet been elaborated. The intergovernmental working group responsible for that elaboration had not completed its work and had had its mandate extended for a further year. That working group, which was also studying the cultural aspects of the right to development, had never established a link between development and archives, and it appeared that government experts in that field saw the two as unrelated. That being so, his delegation wondered whether the reference to the right to development in paragraph 7, and in articles 28 and 29, was to be understood in the sense of a very general notion referring to the right of each and every State to unimpeded development, a notion to which his delegation would not hesitate to subscribe, or whether it went beyond that and, if so, in what respect. Since his delegation was not certain of the meaning to be given to that expression or to other expressions used in paragraph 7, and since it was not certain of its effects or its legal and factual prerequisites, it was not in a position to vote in favour of either the article as drafted by the International Law Commission or the Nigerian amendment.

39. As to the right of peoples to information about their history and to their cultural heritage, in the light of paragraphs (29) to (35) of the International Law Commission's commentary on article 26, his delegation took it that the term "right" had been used in a non-technical sense without reference to the rights in a technical sense accorded by contemporary international law. As in the case of article 14, therefore, his delegation regarded article 26 as embodying new rules which belonged to the sphere of progressive development of international law and not to the codification of international law. States were free to accept such rules or to reject them; in other words States had a sovereign right to decide whether or not they wished to abide by those rules in the future.

40. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation supported article 26 as proposed by the International Law Commission, since it took a balanced approach to the delicate problem of the passing of archives in the case of newly independent States.

41. The use of the term "archives" instead of "States archives" in paragraph 1, subparagraph (*a*), was fully justified. It was important to make it clear that historical archives of the pre-colonial period were archives not of the predecessor State but of the territory itself; they should therefore revert to the newly independent State, quite independently of any question of the succession of States. That approach was supported by historical practice. A similar provision concerning the passing of administrative archives was contained in subparagraph (*b*). His delegation considered the Egyptian amendment fully consistent with the provisions of subparagraphs (*a*) and (*b*) of paragraph 1.

42. Paragraph 2 set forth the important principle that the conclusion of agreements between the parties concerned should be on the basis of mutual benefit and equity. The interested parties should in that connection take into account the principle of the unity of archives.

43. The use of the broad formulation "best available evidence" in paragraph 3 was of particular importance for newly independent States which needed evidence concerning title to part of their territory or boundaries.

44. Paragraph 4, which established the obligation of co-operation between the predecessor State and the successor State, was in his delegation's view valid not only for paragraph 1, subparagraph (*a*), of article 26, but for all of Part III of the draft convention.

45. His delegation fully supported paragraph 7 and could not agree to its deletion. In view of the fundamental importance of that paragraph, his delegation was ready to consider alternative formulas and in that sense could support the Nigerian amendment.

46. Mr. MURAKAMI (Japan) said that, as his delegation had already stated during the discussion on article 14 at the 13th meeting, it attached primary importance to agreements concluded between the parties concerned as a criterion to regulate the passing of State property to the successor State. Paragraph 1 of article 26 should, in its view, be modified to reflect the primacy of that principle.

47. Paragraph 1, subparagraph (*a*), and paragraph 4 of the article used the phrase "having belonged to . . ."; he reiterated his delegation's position that whether and in what manner an entity had possessed the archive in question before the period of its dependency was a matter for determination in accordance with the rules of international and internal law applicable at the time.

48. His delegation had again to express concern at the use of certain imprecise terminology in article 26, such as "normal administration" in paragraph 1(*b*), and "of interest to the territory" and "benefit as widely and equitably as possible" in paragraph 2. Some of those and other similar phrases also appeared elsewhere in the draft convention. He trusted that the Drafting Committee would be given the task of reviewing such loosely formulated phrases.

49. Turning to paragraph 3, he said that his delegation considered it important that due regard should be paid to the legitimate interests of third States.

50. His delegation had great difficulty in accepting paragraph 7. The concepts of the right of peoples to development, to information about their history and to their cultural heritage were both vague and difficult to apply in concrete situations. His delegation greatly doubted, moreover, that such "right" really existed as established concepts of international law. Furthermore, paragraph 7 was at variance with his delegation's fundamental position that agreement between the parties concerned should have primary importance. In his delegation's view, therefore, that paragraph should be deleted.

51. Those arguments applied *a fortiori* to the Nigerian amendment which was totally unacceptable to his delegation.

52. With regard to the Egyptian amendment, he recalled that his delegation had expressed concern at the 26th meeting regarding the lack of clarity of the two criteria mentioned in paragraph 2 of article 25. That concern also extended to the use of the phrase ". . . that relates exclusively or principally . . ." suggested by Egypt for subparagraph (*c*) of paragraph 1 of article 26.

53. Mr. SKIBSTED (Denmark) said that his delegation had already observed in connection with article 14 that the primacy of agreement between the States concerned should be clearly stated; that observation also applied in respect of article 26.

54. A number of the criteria referred to in the article were vague and that was particularly true in the case of paragraph 7. While his delegation was sympathetic to the underlying motivation of that provision, it found it unacceptable to restrict the freedom of the parties concerned to conclude agreements. The concepts of the right of the peoples of newly independent States to development, to information about their history and to their cultural heritage were not sufficiently precise to be used as legal terms. As had already been noted, the concept of the right of peoples to development, in particular, which was under dispute in other international forums, required clarification.

55. His delegation had difficulty in understanding why the International Law Commission had included paragraph 6 in the article. The economic and social circumstances envisaged did not necessarily correspond to those of newly independent States. As had been pointed out in connection with article 14, paragrah 3, there might be a case of a territory adjoining a State which was larger and richer than the predecessor State.

56. For the above reasons, his delegation was unable to support either the draft article as proposed by the International Law Commission or the Nigerian amendment.

57. Mr. BOSCO (Italy), referring to the Nigerian amendment, expressed concern at the introduction of such a controversial concept as the rendering of international agreements void. He wished to remind those who had spoken in favour of the amendment that it was at variance with the hypothesis expounded in the 1969 Vienna Convention on the Law of Treaties. Since the Conference was codifying international law, it was extremely important to be on firm ground in such a matter.

58. His delegation would be unable to vote in favour of article 26 as a whole and, in particular, could not support paragraph 7.

59. Mr. PIRIS (France) said that his delegation's comments on article 14 at the 13th and 16th meetings also applied to article 26. His delegation could not accept the text proposed by the International Law Commission or the Egyptian and Nigerian amendments, for a number of reasons.

60. First, it was essential for article 26 to begin in the same way as article 25, with a paragraph providing that what was to happen to State archives likely to be transferred from the predecessor to the successor State should be determined by agreement between the States concerned.

61. Secondly, article 26 contained a number of provisions which gave rise to difficulties. For instance, the word "State" should be inserted before "archives" in paragraphs 1(*a*) and 4; in any case, in that context, the word "territory" should be interpreted as covering the juridical person concerned; and some nebulous and imprecise terms such as "of interest to the territory", "belonging or having belonged" and "normal administration" should be clarified.

62. Thirdly, the article should include a provision, on the lines of article 25, paragraph 5, which would allow the predecessor State to be supplied with appropriate reproductions of State archives passed to the successor State.

63. Fourthly, as the representative of Denmark had pointed out, the meaning of paragraph 6 was not clear. What was the distinction between the provisions of that paragraph and the cases covered by articles 25 and 28? In what way did they correspond to the heading of article 26, since paragraph 6 was not concerned with a newly independent State?

64. Finally, without prejudice to his delegation's position regarding the various rights referred to in paragraph 7, he considered that paragraph as drafted to be unacceptable, as it corresponded neither to State practice nor to international law. Negotiations must be entered into to convert it into a provision which could apply to all types of succession and could be couched in the form of a recommendation. In any event, the paragraph would obviously be binding only on the States which became parties to the convention and would not affect other States.

65. Mr. BARRERO-STAHL (Mexico) said that his delegation found the text of article 26 as proposed by the International Law Commission fully acceptable. It would support the Nigerian amendment.

66. Mr. PÉREZ GIRALDA (Spain) said that his delegation shared some of the concerns voiced by earlier speakers, particularly regarding the unsatisfactory definition of the "archives-territory" link and the provisions of paragraph 7. It would therefore not be able to support either the Egyptian or the Nigerian amendments.

67. While it was clear that the debate on article 26 mirrored to a large extent the discussion on article 14, his delegation preferred to concentrate on new elements that had emerged during the consideration of article 26. The representative of Brazil had proposed a compromise solution which, in his delegation's view, could represent an important contribution to the success of the future convention. He urged that serious consideration be given to that proposal or any other suggested compromise, his delegation's reservations concerning article 26 as it stood notwithstanding.

68. Mr. KIRSCH (Canada) said that his delegation had reservations concerning a number of the formula-

tions used in article 26, which it considered unduly vague. It believed, furthermore, that article 26 should have had an initial provision giving priority to agreements concluded between States. The absence of such a provision, taken in conjunction with the wording of paragraph 7, was regrettable.

69. While the objectives of paragraph 7 were laudable, that paragraph as it stood was unacceptable to his delegation. Concepts which, irrespective of their intrinsic merits, were not generally recognized as norms of international law could, under that paragraph, be given precedence over agreements that had been concluded in accordance with legal norms. Furthermore, the concepts referred to in paragraph 7 raised insurmountable problems of interpretation; the International Law Commission's commentary, with its selective use of sources, did nothing to allay his delegation's concerns in that connection.

70. Recalling that a number of objections had been raised concerning the divergent interpretations that could be given to certain elements of article 24, he pointed out that that provision was in fact much clearer in outline and scope than article 26, paragraph 7. He trusted that a similar desire for intellectual clarity would be brought to bear on the latter paragraph.

71. It was to be hoped that a vote would not be taken on article 26 as it stood, since its acceptance would constitute only an illusion of progress.

72. For the reasons he had given, his delegation would also be unable to support the Nigerian amendment.

73. Mr. KOLOMA (Mozambique) said that, from a legal standpoint, the Nigerian amendment represented an improvement over the International Law Commission's text of article 26, since it would have the effect of nullifying agreements between States which infringed such basic rights of the peoples of newly independent States as the right to development, to information about their history, and to their cultural heritage. Moreover, the amendment foresaw the possibility of legal sanctions for such infringements.

74. In his delegation's view, the Nigerian amendment did no more than state explicitly elements that were implicitly contained in the International Law Commission's draft. His delegation had therefore had no difficulty in supporting that amendment.

75. His delegation also considered that the Egyptian amendment improved the Commission's text, and would accordingly support it.

76. Mr. MONNIER (Switzerland) said that his delegation's position on article 26 corresponded largely to that which it had indicated in connection with article 14. The possibility that the concepts referred to in paragraph 7 of article 26, which were questioned as legal norms, could invalidate agreements concluded between the predecessor and the successor State made that provision very difficult to accept. By analogy, his delegation would also be unable to support the Nigerian amendment.

77. He believed it was more important to seek a solution to the problem than to reiterate earlier stated positions; the suggestions made by the representatives of Brazil and France offered a possible basis for engaging in further dialogue. Both of those proposals would give article 26, paragraph 7, and article 14, paragraph 4 a less restrictive scope.

78. Mr. BEN SOLTANE (Tunisia) said that his delegation considered the provisions of article 26 extremely important. It fully supported the text proposed by the International Law Commission. The archives referred to in paragraph 1, subparagraph (*a*), constituted the collective memory of the newly independent State and would therefore contribute to its intellectual development. Subparagraph (*b*) was equally important for the viability of the newly independent State because the archives to which it referred constituted a vital element in the administration of its territory. The archives mentioned in paragraph 2 were equally indispensable. His delegation welcomed the inclusion in the article of paragraph 7, which responded to concerns expressed in connection with article 14, paragraph 4. The paragraph promoted the protection of three fundamental rights which had not yet been codified but constituted a major concern of international society. It was not necessary to define the right to development, which would be the subject of other conventions.

79. Mr. RASUL (Pakistan) said that his delegation had no difficulty in accepting the text proposed by the International Law Commission. He understood the Nigerian amendment to be an attempt to bring paragraph 7 of article 26 into line with article 8 of the 1978 Vienna Convention on Succession of States in Respect of Treaties,[1] in which the nullity of devolution agreements had already been accepted. The basis of article 8 of the 1978 Convention had been acknowledgement of the fact that parties to the devolution agreement were unequal. That basis could be valid in the case of paragraph 7 of article 26 also. His delegation therefore thought that the Nigerian amendment deserved favourable consideration. The difficulty faced by the representative of Nigeria might be the understanding of the real import of the words "shall not". Since the word "shall" was mandatory in legal language, infringement of the rights referred to would amount to a violation of an obligation, which would affect the validity of the agreement. Perhaps the Expert Consultant could throw light on the legal importance of the words "shall not".

80. Mr. A. BIN DAAR (United Arab Emirates) also expressed full support for the International Law Commission's text, which rightly reflected the concerns of newly independent States. His delegation would have no hesitation in accepting the amendments submitted by Nigeria and Egypt.

81. There was, however, also a danger that the predecessor State could deliberately damage or destroy certain archives relating to the newly independent State and which should be passed to it. That had in fact already been done by certain former colonial Powers or protectors of dependent States. His delegation therefore proposed the insertion of a new sentence in paragraph 3 reading as follows: "The predecessor State shall not arbitrarily damage or destroy any archives relating to the newly independent State."

82. Mr. NATHAN (Israel) said that paragraph 1 of the draft article did not appear to take account of the fact

that in many dependent territories the archives were not State archives of the colonial predecessor State but did in fact belong to the governing authority of the colonial territory which in many instances had a juridical status of its own.

83. With regard to paragraph 7, the question of the extent or the very existence of a norm of *jus cogens* that would nullify a treaty provision conflicting with it was problematic. The rights referred to in paragraph 7 had not as yet crystallized into a norm generally accepted by the international community as one to which no derogation was permitted. Consequently, the question of rendering void agreements between the predecessor and the successor State in regard to those matters did not arise.

84. It might also be asked why the newly independent State should be singled out with respect to development, cultural heritage and information and why similar benefits should not apply in other cases of succession of States. A compromise solution to those problems might be sought, along the lines suggested by the representatives of the Netherlands and Brazil, by including in Part I of the convention a provision which gave a positive expression to those principles in less normative terms than those used in paragraph 7.

85. Mr. YÉPEZ (Venezuela) said that his delegation could see no reason to accept any amendment to the text drafted by the International Law Commission, which it considered almost perfect. The concepts put forward in the Egyptian amendment were implicitly contained in paragraphs 1 and 2 of the Commission's text of article 26. It would be interesting to hear from the Expert Consultant why those concepts were included in article 25 and not in article 26.

86. With regard to the Nigerian amendment, the intention of the Commission's draft of paragraph 7 to encourage agreements between States and expressly to forbid any clause in such agreements which limited the right of the peoples of both the States concerned to development, to information about their history and to their cultural heritage would be weakened by any alteration of the existing text. No final decision could be reached on article 26 without further consideration of the Brazilian proposal, which called for a radical change in paragraph 7 to bring it into line with earlier paragraphs of the draft convention.

87. Mr. ECONOMIDES (Greece) said that he had noted in article 26 imprecise expressions similar to other such expressions in earlier articles. The most important part of the article was paragraph 7. His delegation fully endorsed the intention underlying that paragraph but considered the wording used more appropriate to penal law than to international law. The establishment in international law of the rights referred to would be better served by using a positive rather than a negative approach and by stating that agreements between the predecessor and the newly independent States should contribute to strengthening the rights of their peoples to development, to information about their history and to their cultural heritage. His delegation therefore agreed with those delegations which considered that paragraph 7 should be reworded and perhaps appear elsewhere.

88. Mr. BEDJAOUI (Expert Consultant) said that article 26 was one of the most substantive in the entire draft convention. The International Law Commission had achieved a proper balance in its efforts in the codification and progressive development of international law. The article was dominated by two ideas: to preserve the historic and cultural heritage of the peoples of each of the States concerned by preserving their right to development, to information about their history and to their cultural heritage and, as a corollary, to try to reconcile the interests of the predecessor and successor States and to promote co-operation between them. The triple right referred to in paragraph 7 was new in international law. However, the surprising element was not that such rights were now being invoked but rather that they had not been invoked earlier.

89. Admittedly, there were gaps in the provisions of the article and problems which were only partially solved. Those had motivated the amendments submitted by Nigeria and Egypt, as well as those submitted orally during the discussion. No mention had for instance been made of archives which were of interest to several newly independent States but which were preserved either in the capital of the former colonial State or in the territory of one of the newly independent States.

90. Paragraph 1, subparagraph (*a*), referred to archives existing before the colonial period, the restitution of which should be immediately applied.

91. The Egyptian amendment contained a number of points which responded to the concerns that had been expressed by UNESCO. Their substance had not been completely overlooked by the International Law Commission, which had not wished to repeat the text contained in paragraph 2(*b*) of article 25 but had tackled the problem in paragraph 2 of article 26 through bilateral agreements between the predecessor State and the newly independent State. Paragraph 2 also showed that the archives to be passed to the newly independent State could be either original documents or reproductions. The final decision on the fate of such archives depended on the equitable balance between the needs of the predecessor and the successor States. In short, the International Law Commission had preferred to encourage co-operation between the predecessor and successor States by emphasizing the need for agreement between the two. The new subparagraph 1(*c*) proposed by the representative of Egypt might concern political or other archives dating from the colonial period which were part of the history of the former colonial State but were even more important to that of the newly independent State.

92. Paragraph 3 of the article was an extremely useful paragraph which had given rise to no comments. Paragraph 4 did not refer to an obligation to return archives which had been dispersed during the period of dependence but rather to co-operation between the two States to recover them.

93. There had been no comments from delegations concerning paragraphs 5 and 6, the substance of which had already been discussed in connection with previous articles.

94. In paragraph 7, the International Law Commission's intention had been to develop co-operation between the predecessor and the newly independent State. All the emphasis was on the rights of the peoples of both States, so that the rights of one should not be sacrificed to those of the other. He therefore felt that the International Law Commission should have been congratulated on emphasizing co-operation between States in ensuring the rights of both peoples.

The meeting rose at 6.10 p.m.

29th meeting

Tuesday, 22 March 1983, at 7 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 26 (Newly independent State) (*concluded*)

1. Mrs. TYCHUS-LAWSON (Nigeria) said that the trend of the discussion on article 26 had led her delegation to believe that the majority of the delegations at the Conference supported the formulation of a set of fair and equitable rules. The Nigerian delegation also noted with satisfaction the observation by the representative of the Federal Republic of Germany (28th meeting) that the Nigerian amendment to paragraph 7 (A/CONF.117/C.1/L.40) answered the question he had raised previously in connection with article 14. As the representative of the Netherlands had said, paragraph 7 as proposed by the International Law Commission gave guidance on international law and was not a programme of action. All that the Nigerian proposal sought to do was to find a basis for such a programme. She also agreed with the representative of Kenya that the idea underlying the Nigerian amendment was to render inviolable the rights mentioned in the paragraph, which should no longer be a matter of dispute. However, paragraph 27 as drafted did not explicitly state the possible result of infringement of those rights. The basic aim of the Nigerian proposal was to fill that gap to the benefit of both the predecessor State and the newly independent State.

2. However, in the light of the further explanation provided by the Expert Consultant and in view of its belief that the convention should aim at co-operation between all States in a spirit of compromise, the Nigerian delegation withdrew its amendment. It supported the amendment submitted by Egypt (A/CONF.117/C.1/L.46).

3. Mr. HAWAS (Egypt) considered that articles 26 and 14, taken together, constituted a real achievement, for which the International Law Commission deserved every congratulation. The discussion at the previous meeting had revealed broadly based support for the Egyptian amendment, but uncertainty had been expressed regarding its implications for paragraph 2 of article 26. That paragraph, as was perfectly normal, was concerned with agreement on matters other than those covered by paragraph 1. The Egyptian proposal did no more than transfer the concept of article 25, paragraph 2(*b*), which the Committee had already approved, to the case of newly independent States. The amendment, if adopted, would form part of paragraph 1 and paragraph 2 would still refer to cases other than those mentioned in paragraph 1. Consequently, the Egyptian amendment would not affect paragraph 2.

4. With the regard to the question whether the Egyptian proposal would limit the scope of paragraph 2, the intention of the International Law Commission in drafting paragraph 2 had been, as the Expert Consultant had indicated (28th meeting), to provide a basis for agreement, co-operation and equity in matters not dealt with in paragraph 1. The Egyptian amendment would not conflict with that intention, for paragraph 2 would still leave room for reaching decisions by mutual agreement. It was unclear why an unrestricted attitude had been adopted in respect of the transfer of part of the territory of the State while a narrower view had prevailed on co-operation and agreement with newly independent States. It was difficult to explain why the concept of article 25, paragraph 3, had not been embodied in article 26. Some archives were of very ancient date and related exclusively to States affected by a succession. In view of the wide measure of support that the Egyptian amendment appeared to command, he believed that the simplest course would be to put it to the vote.

5. Mr. A. BIN DAAR (United Arab Emirates), referring to his delegation's oral proposal to amend paragraph 3 of article 26 (28th meeting), said that he withdrew that proposal, but reserved his delegation's right to resubmit it later.

6. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) congratulated the Expert Consultant on his expert analysis of article 26 (*ibid.*), which his delegation fully supported. It took proper account of the legitimate interests of newly independent States and successor States and recognized that archives were an integral part of the development of those States. The article was well balanced and paragraph 7 took due account of the interests of the predecessor State.

7. Mrs. BOKOR-SZEGÖ (Hungary) considered that article 26 was entirely in the spirit of the various important resolutions adopted by the United Nations General

Assembly to ensure that the codification of international law relating to the succession of States took account of the needs of newly independent States. She supported paragraph 7, as proposed by the International Law Commission, because its content stemmed logically from a nation's right to self-determination. The 1978 Vienna Convention on Succession of States in Respect of Treaties[1] contained provisions referring to the right of peoples to self-determination, a right which was also recognized in the Charter of the United Nations and was of paramount interest at the present time. She therefore supported the adoption of article 26, as drafted.

8. Mr. TEPAVITCHAROV (Bulgaria) said that, while his delegation was sympathetic to the Nigerian amendment, it could not support it, because the final text adopted would need to command general approval. Paragraph 7 as drafted was well balanced and offered the best basis for a compromise solution. The legal concepts to which paragraph 7 referred were still under discussion but the main purpose of the paragraph was to develop co-operation between predecessor and successor States, something which would be impossible in a hostile atmosphere. Paragraph 7 could not codify; all it could do was to indicate the direction which international law should take. He supported the text of article 26 as proposed by the International Law Commission.

9. Mr. CHO (Republic of Korea) said that his delegation fully supported article 26 as drafted by the International Law Commission. As in article 14, special treatment for the category of newly independent States was needed, in particular to reflect the special nature of the process of independence. In its view paragraph 7 in particular could be commended as a step forward in the progressive development of international law.

10. Mr. MIKULKA (Czechoslovakia) expressed his satisfaction with article 26 as drafted. The process of decolonization had made codification of the rules governing succession of States a priority concern, and articles on the situation of newly independent States should therefore have a central place in the work.

11. His delegation would vote in favour of article 26 as drafted, including its paragraph 7, which was a contribution towards the progressive development of international law as defined by the Statute of the International Law Commission.

12. Mr. CONSTANTIN (Romania) said that his delegation fully approved of article 26 as drafted. The discussion at the current meeting had strengthened his delegation's support for that text, particularly after the explanation given by the Expert Consultant.

13. Mr. MORSHED (Bangladesh), also expressing full support for the International Law Commission's text, suggested that the Drafting Committee might wish to insert a comma after the words "that territory" in paragraph 1(*b*), in order to bring the text into line with article 25, paragraph 2(*b*).

14. The CHAIRMAN said he believed that the only matter before the Committee on which a vote had to be taken was the Egyptian amendment. He asked whether the delegation of the Netherlands still requested a separate vote on paragraph 7.

15. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation would have preferred to amend its original request so that the vote on paragraph 7 would have been deferred until the Brazilian proposal for a new article came up for discussion. Such a procedure would be unduly complicated, however, and the Netherlands delegation therefore had to maintain its request for a separate vote on paragraph 7. Very regretfully, it would have to vote against that paragraph.

16. The CHAIRMAN invited the Committee to vote on the Egyptian amendment (A/CONF.117/C.1/L.46).

The Egyptian amendment was adopted by 31 votes to 9, with 22 abstentions.

17. The CHAIRMAN invited the Committee to vote on paragraph 7 of article 26.

Paragraph 7 of article 26, as proposed by the International Law Commission, was adopted by 44 votes to 20.

18. The CHAIRMAN invited the Committee to vote on draft article 26, as amended.

Draft article 26, as amended, was adopted by 45 votes to 19, with 1 abstention, and referred to the Drafting Committee.

19. Mr. ENAYAT (Islamic Republic of Iran), speaking in explanation of vote, said that his delegation had voted in favour of article 26 because it contributed to the development of international law. His delegation was still of the opinion that the article did imply nullity of agreements infringing the rights referred to.

20. Mr. ECONOMIDES (Greece) said that his delegation had voted against article 26 solely because of its paragraph 7, whose categorical and extremist wording would not contribute to the development of international law and might indeed hamper consolidation of the rights to which it referred. It was to be hoped that a more realistic and acceptable form of words would eventually be found.

21. Mr. SUCHARIPA (Austria) said that his delegation had voted against paragraph 7 and against article 26 as a whole for the reasons it had already stated in connection with article 14 (16th meeting). His delegation did not question the legitimacy of a separate article dealing with newly independent States. However, it had serious reservations with regard to paragraph 7 of the article. It seemed dangerous to set up a new *jus cogens* without consideration of the underlying concepts and without international consensus. The concept of a right to development needed further elaboration. Furthermore, his delegation could not accept the notion of "relating" to cover the archives-territory link as contained in the amended text.

22. The result of the vote just taken and of the vote on article 14 showed that, if the Committee of the Whole was to produce a realistic legal instrument, careful negotiation would be needed in the future and flexibility would have to be shown by all concerned.

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

23. Mr. MURAKAMI (Japan) said that he had voted against the International Law Commission's draft of article 26 for the reasons he had stated at the previous meeting. However, since article 26 had been adopted, the Japanese delegation wished to place on record its understanding that paragraph 7 was not to be interpreted as having the effect of nullifying any agreement concluded contrary to it.

24. Mr. MONNIER (Switzerland) said that he had been unable to support article 26 as a whole because his delegation had the same basic objection to it as to article 14. He endorsed the remarks of the Austrian representative.

25. Mr. ZSCHIEDRICH (German Democratic Republic) said that his delegation had voted in favour of draft article 26, as amended. The transfer of archives which had belonged to a formerly dependent territory and of administrative archives needed for normal administration was essential for a newly independent State. That need had to be recognized by the predecessor State. Paragraph 7 was a major advance in international law.

26. Mr. OLWAEUS (Sweden) said that his delegation shared the views of the representative of Switzerland.

27. Mrs. THAKORE (India) said that her delegation had previously found the scope of the Egyptian amendment unclear. The explanation given by the Expert Consultant had clarified that amendment and her delegation had therefore voted in favour of it.

28. Mr. HAWAS (Egypt), referring to the new subparagraph (*c*) just adopted for incorporation into article 26, suggested that the Drafting Committee should consider replacing the concluding words "the successor State" by the more appropriate expression: "the newly independent State".

29. His delegation welcomed the efforts which had been made to reach a generally acceptable solution to the problem raised by article 26. In particular, his delegation would examine with an open mind and at the appropriate time the proposal made by the Brazilian delegation.

Article 27 (Uniting of States)

30. Mr. CHO (Republic of Korea) said that he accepted the substance of article 27, the text of which was similar to that of article 15. He suggested, however, for the attention of the Drafting Committee, the advisability of replacing in the English text of paragraph 1 the words "and so form a successor State" by the more suitable phrase "and so form one successor State", in line with the wording of article 31, paragraph 1, of the 1978 Vienna Convention on Succession of States in Respect of Treaties.

31. Turning to paragraph 2, he recalled that, during the discussion of article 15, the issue of whether to maintain or delete paragraph 2 had been raised. The Committee had decided to refer that question to the Drafting Committee (16th meeting) with the request that it make a recommendation thereon. He suggested that the same course should now be adopted with respect to article 27.

32. Mr. MURAKAMI (Japan) said that his delegation had the same difficulties with paragraph 2 of article 27 as it had mentioned earlier in connection with article 15 (16th meeting). He accordingly suggested that article 27 also be referred to the Drafting Committee with the request to submit a recommendation on the desirability of retaining or deleting paragraph 2.

33. The CHAIRMAN proposed that the Committee should adopt the same course as it had done in the case of article 15. Without taking a vote, it would refer article 27 to the Drafting Committee, requesting it to submit to the Committee of the Whole, in conformity with rule 47, paragraph 2, of the rules of procedure, a recommendation on the desirability of retaining or deleting paragraph 2 of article 27, after having examined it in the context of that article and in relation to corresponding provisions in other parts of the draft article. The drafting suggestion made by the delegation of the Republic of Korea with respect to paragraph 1 would also be referred to the Drafting Committee.

34. In the absence of objection, he would take it that the Committee agreed to that course.

It was so decided.

Article 28 (Separation of part or parts of the territory of a State)

35. Mr. RASUL (Pakistan), introducing his delegation's amendment to paragraph 4 of article 28 (A/CONF.117/C.1/L.10), said that article 28, including its paragraph 4, was acceptable in principle. His delegation's proposal to insert the words "or on exchange basis" in that paragraph was intended simply as an acknowledgement of existing State practice. Those additional words in no way conflicted with the substance of paragraph 4; they merely elaborated its contents by giving recognition to existing practice.

36. Mr. ROSENSTOCK (United States of America) said that paragraph 3 of article 28 raised the same issue as paragraph 4 of article 14 and paragraph 7 of article 26. The language used in all those paragraphs attempted to impose upon States a restriction on their freedom to conclude international agreements; that restriction was grounded on an alleged principle which was not accepted by the international community as a principle of international law, and still less as a rule whose breach could possibly have the effect of making a treaty void.

37. For the reasons it had already indicated during the discussion of articles 14 (13th and 15th meetings) and 26 (28th meeting), his delegation could not accept any article containing language of that kind.

38. Mr. EDWARDS (United Kingdom) said that his delegation could not accept paragraph 3 of article 28 and would be obliged to vote against it, for the numerous reasons advanced in the statements of those delegations which had spoken against paragraph 4 of article 14 and paragraph 7 of article 26, including the statements made by his own delegation on those paragraphs (13th, 15th, 16th and 28th meetings).

39. Mr. MUCHUI (Kenya) said that his delegation was satisfied with article 28 and could also support the amendment submitted by Pakistan.

40. As a matter of drafting, he suggested that, in paragraph 4, the words "and at the expense of one of

them" should be replaced by "and at the expense of either one of them".

41. Mr. MORSHED (Bangladesh) said that his delegation could accept draft article 28. He would like to have further clarification of the idea underlying the amendment of Pakistan. If that amendment was adopted, the same change would probably have to be made in paragraph 5 of article 29, which contained a similar provision.

42. Mr. PIRIS (France) said that his delegation could accept the amendment submitted by Pakistan but had a number of difficulties with article 28 in the form proposed by the International Law Commission.

43. In the first place, his delegation saw no reason not to begin the article by providing, as in paragraph 1 of article 25, that issues of succession should be settled by agreement between the States concerned.

44. Paragraph 1 contained vague and imprecise wording: "normal administration" in subparagraph *(a)*; "that relates directly to the territory" in subparagraph *(b)*. In the corresponding paragraph 2*(b)* of article 25, the language used was "that relates exclusively or principally" and no valid reason had been given for that change in language.

45. Paragraph 2 called for no comment except that the "best available evidence" could be copies, as explained in paragraphs (20) to (24) of the commentary to article 25, to which paragraph (17) of the commentary to article 28 referred.

46. The drafting of paragraph 3 was unacceptable to his delegation and he referred to his statements on paragraph 4 of article 11 (13th meeting) and paragraph 7 of article 26 (28th meeting).

47. The phrase "connected with the interests of their respective territories" in paragraph 4 was unduly vague. It would have been better to use the more appropriate formula used in paragraphs 4 and 5 of article 25.

48. Lastly, in his delegation's view, there was no reason to differentiate between the case referred to in paragraph 5 and those dealt with in paragraph 1 of article 25 and paragraph 6 of article 26.

49. In conclusion, he announced that his delegation could not support article 28 in its current form.

50. Mr. SKIBSTED (Denmark) said that paragraph 1 of article 28, like paragraph 1 of article 29, reconfirmed the pre-eminence of agreement between the States concerned. He therefore had difficulty in understanding why paragraph 3 of article 28, like paragraph 4 of article 29, embodied a clause—to be found also in paragraph 7 of article 26—which would have the effect of imposing restrictions on the freedom of the States parties concerned to conclude agreements. That restriction—which was not to be found in the corresponding articles 16 and 17 in Part II of the draft convention—was unacceptable to his delegation, which could therefore not support articles 28 and 29 as proposed by the International Law Commission.

51. Mrs. TYCHUS-LAWSON (Nigeria) found the text of article 28 acceptable and welcomed the amendment submitted by Pakistan as a valuable improvement of the language of paragraph 4.

52. On a point of drafting, she suggested that, in paragraph 5, the opening words "The provisions of paragraphs 1 to 4 apply . . ." should be altered, for the sake of clarity, to read: "The provisions of paragraphs 1 to 4 shall also apply . . .".

53. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation regretted that it could not support article 28 because it objected to paragraph 3 for the reasons it had already given in detail in voting against paragraph 7 of article 26 (28th meeting).

54. Mr. SUCHARIPA (Austria) said that his delegation had withdrawn its amendment to article 28 (A/CONF.117/C.1/L.32) in order to expedite the proceedings of the Committee, as it had done earlier with its amendment to article 25 contained in document A/CONF.117/C.1/L.31. His delegation could not, however, vote in favour of a text containing the objectionable form of words "that relates directly to the territory".

55. His delegation opposed paragraph 3 of article 28 for the reasons it had already indicated in voting against paragraph 7 of article 26. Furthermore, he pointed to the omission of the word "State" after the word "successor" in paragraph 1 of the English text, a problem which should be taken up by the Drafting Committee.

The meeting rose at 8.30 p.m.

30th meeting

Wednesday, 23 March 1983, at 10.20 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 28 (Separation of part or parts of the territory of a State) (*concluded*)

1. Mr. MONNIER (Switzerland) pointed out that the wording proposed by the International Law Commission for article 28, paragraph 1(*b*) was ". . . relates directly to the territory to which the succession of States relates", whereas the wording in article 25, paragraph 2(*b*) was ". . . relates exclusively or principally . . .". The commentary to article 28 in its paragraph (16), which cross-referred to paragraph (25) of the commentary to article 25, indicated that the reason for the different choice of words was that article 25 dealt with the case of the transfer of a small part of a State's territory. As in the case of the corresponding provisions concerning succession of State property, he wondered whether that subtle distinction was of any practical use and whether it would not result in difficulties.

2. He added that article 28, paragraph 3 caused his delegation the same difficulties of principle as paragraph 4 of article 14 and paragraph 7 of article 26. Owing to those difficulties, his delegation would be unable to support the article as a whole.

3. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation could support the Pakistan amendment (A/CONF.117/C.1/L.10).

4. His delegation had the same difficulties with paragraph 3 of article 28 as with paragraph 7 of article 26. It would not propose a separate vote on paragraph 3 since an earlier proposal of that kind had not received the Committee's support, but as long as that paragraph with its reference to imaginary rules of *jus cogens* remained, his delegation would have to vote against the article.

5. Mr. FONT (Spain) said that his delegation did not understand the use of the expression "normal administration" in article 28 of paragraph 1(*a*), which, in its opinion, would be a potential source of disputes.

6. In connection with the words "relates directly to the territory to which the succession of State relates" in paragraph 1(*b*), he pointed out that nothing was said about what would happen if the documents, even though relating to the successor State, originated in the predecessor State. Moreover, there was no definition of the meaning of "directly".

7. His delegation also had difficulties with paragraph 3. The right to information had been recognized but the right to development was still under discussion in the Commission on Human Rights. Accordingly, his delegation considered that article 28 mentioned a right the content and very existence of which had not yet been confirmed.

8. In paragraph 4 of article 28 the expression "connected with" was ambiguous and might give rise to extensive claims on the part of the successor State.

9. His delegation was prepared to support the amendment of Pakistan to paragraph 4.

10. Mr. ECONOMIDES (Greece) said that his delegation could accept the Pakistan amendment, which added something useful to paragraph 4. It could also accept article 28, with the exception of paragraph 3 which was unacceptable to his delegation for the reasons given in connection with article 26, paragraph 7 (28th and 29th meetings).

11. Mr. MIKULKA (Czechoslovakia) said that his delegation supported article 28. However, he pointed out that, although paragraphs 2 and 4 of the article were drafted in the indicative in the French version, it was clear that the Commission intended them to be normative.

12. His delegation had problems with the Pakistan amendment, which, if adopted, would have to be interpreted as making the exchange mandatory; that would result in numerous legal problems.

13. He added that there was a clear inconsistency between the definition of "State archives" in article 19, where they were defined as archives belonging to the predecessor State, and the provision in article 28, paragraph 4, where the expression covered also State archives of the successor State.

14. Mrs. THAKORE (India) said that her delegation had no difficulty with article 28 as it stood.

15. With regard to the amendment by Pakistan to paragraph 4, her delegation proposed, as a subamendment, that the words "as appropriate" should be added after the words "on an exchange basis".

16. Mr. BEN SOLTANE (Tunisia) supported article 28, especially paragraph 3, for the basic rights that it mentioned were those of all peoples, both of predecessor and of successor States.

17. His delegation could accept the amendment of Pakistan.

18. Mr. MURAKAMI (Japan) said that his delegation had the same serious difficulties and reservations with regard to paragraph 3 of article 28 as those it had mentioned earlier with regard to paragraph 7 of article 26 (28th meeting). He added that the article contained some vague language and hoped that the Drafting Committee would be able to improve the formulation.

19. Mr. KOBIALKA (Poland) said that his delegation had no problems in accepting article 28, including paragraph 3.

20. It did have some difficulty in accepting the amendment of Pakistan while recognizing that exchanges of the kind contemplated in the amendment were common practice among States. He thought that the expression proposed by Pakistan was of technical rather than legal significance.

21. Mr. JOMARD (Iraq) said that his delegation had no objection to article 28 as it stood and could also accept the amendment of Pakistan, which would facilitate the exchange of information between predecessor States and successor States and create no new obligations.

22. Mr. AL-KHASAWNEH (Jordan) said that his delegation could accept article 28 as it stood, though it had some difficulty with the expression "normal administration", because of its ambiguity.

23. His delegation could support the amendment of Pakistan which it interpreted as not creating any new obligations.

24. Mr. BARRETO (Portugal) said that although his delegation could accept the Pakistan amendment, it was not in agreement with the spirit of article 28 and would have difficulty in supporting it.

25. His delegation could not accept paragraph 3 of article 28 for the reasons it had stated at the 28th meeting in connection with article 26, paragraph 7, although it was naturally interested in the rights of peoples to economic and cultural development.

26. Moreover, he considered that, as in the case of article 25, primacy should be given to agreement between States.

27. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had no problem in accepting the amendment of Pakistan, but he wondered whether the adjective "appropriate" qualifying the word "reproductions" in the International Law Commission's text would still be necessary if the words "as appropriate", proposed by the representative of India, were introduced in the text. It might be better to delete the second "appropriate".

28. Mr. MORSHED (Bangladesh) thought that it might be best to leave the amendment as originally proposed by the Pakistan delegation. In any case the Drafting Committee should be requested to look into the matter.

29. Mr. IRA PLANA (Philippines) said that his delegation could support both the amendment of Pakistan and article 28 as it stood. Paragraph 3 of the article mentioned certain fundamental rights of peoples to development, to information about their history and to their cultural heritage. No country would knowingly deny itself those three basic rights and hence his delegation felt it essential that the paragraph should form part of article 28.

30. Mr. BEDJAOUI (Expert Consultant) said that, since the International Law Commission had tried as far as possible to model the articles in section 2 of Part III, on State archives, on those in section 1 of Part II, on State property, he would not repeat the explanations he had given concerning the terms used in that section 1. In the case of section 2 of Part III there were slight differences of meaning and stress which accounted for the different wording used.

31. The definition of "State archives", applied to article 28, paragraph 4, would create some difficulties, which were unfortunately inevitable and would arise throughout the draft convention. The International Law Commission, in drafting its definition of State property (article 8) and of State archives (article 19), had been unable to produce a better text than the one before the Committee. It had been unable to define property or archives and *a fortiori* State property or State archives. It had therefore mentioned only State property or archives of the predecessor State, since the archives affected by a succession of States could only be those of the predecessor State. In any case, the definition was valid only in the context of the draft convention.

32. Some drafting difficulties stemmed from the fact that, for the sake of convenience, the International Law Commission had in certain provisions referred to "State property" or "State archives" on the understanding that what was actually meant was State property or archives of the predecessor State. The Committee of the Whole had already discussed the matter at length and had been unable to better the original wording.

33. Referring to the statement by the representative of Czechoslovakia, he said it was true that the French text of paragraphs 2 and 4 of article 28 used verbs in the indicative, which might give the impression that the rules were merely indicative ones. Actually, the International Law Commission intended those rules to have an effective normative capacity.

34. There was a problem with the amendment of Pakistan: would the proposed exchange become mandatory because it was mentioned in a normative text? The proposals put forward by the representatives of India, the United Arab Emirates, Bangladesh and Pakistan would help the Drafting Committee to find an appropriate formula in that regard.

35. Mr. RASUL (Pakistan) said that his delegation accepted the Indian representative's oral subamendment and agreed with the representative of Bangladesh and the Expert Consultant that the matter was one for the Drafting Committee.

36. The CHAIRMAN invited the Committee to vote on the amendment of Pakistan to article 28 (A/CONF.117/C.1/L.10).

The amendment was adopted by 45 votes to none, with 19 abstentions.

37. The CHAIRMAN invited the Committee to vote on article 28 as amended.

Article 28, as amended, was adopted by 43 votes to 21, with 1 abstention, and referred to the Drafting Committee.

38. Mr. KIRSCH (Canada), speaking in explanation of vote, said that his delegation had intended to submit suggestions and comments on various aspects of article 28 but had eventually taken the view that it would be pointless to do so in the light of the results of the vote on article 26. It had seemed a foregone conclusion that

paragraph 3 would stand as part of article 28 and hence that the Canadian delegation would be obliged to vote against article 28 as a whole for the same reasons which had led it to vote against article 26. In his delegation's opinion it was an illusion to believe that the affirmation of a right or rights represented a contribution to the progressive development of international law, in the manifest absence of agreement regarding the content of such a right or rights. The serious problem of the interpretation of the provisions in question by the parties that might be concerned had not been approached in a satisfactory manner during the discussion.

39. He added that in order not to waste the Committee's time, his delegation would not participate in the discussion on article 29. It was his hope that an effort would be made before the conclusion of the Conference to reach a generally acceptable solution.

40. Mr. EDWARDS (United Kingdom) said that his delegation had voted for the amendment of Pakistan which represented a useful addition to article 28, on the understanding that the State making the request for an exchange of reproductions would, in accordance with established international practice, defray the expenses involved.

Article 29 (Dissolution of a State)

41. Mr. ROSENSTOCK (United States of America) said that his delegation had difficulties with paragraph 4 of article 29 as drafted by the International Law Commission similar to those which it had had with articles 28 (29th meeting), 26 (28th meeting) and 14 (15th meeting); he requested that cross-references to the discussion on those articles should be included in the record of the meeting. Certain of the material contained in paragraph 4 of article 29 could be perceived as falling within the context of article 19 of the Universal Declaration of Human Rights[1] which provided for freedom of information and the free exchange of ideas. His delegation hoped that such an approach might provide an avenue through which difficulties might be resolved. His delegation could not support paragraph 4 or article 29 as a whole.

42. Mr. MURAKAMI (Japan) said that the comments and reservations which his delegation had made on paragraph 7 of article 26 at the 28th meeting applied with equal force to paragraph 4 of article 29. He also expressed his concern at the vagueness of the wording used in article 26.

43. The CHAIRMAN said that the problems of principle involved in article 29 were the same as those which had been raised during the debate on article 28. He suggested that the Committee should proceed to vote on the article, bearing in mind that no formal amendments had been submitted.

44. Mr. MORSHED (Bangladesh), supported by Mr. BEN SOLTANE (Tunisia), said that, in view of the amendment which had been adopted to paragraph 4 of article 28, it might be appropriate to make a similar amendment to paragraph 5 of article 29. He proposed therefore that the words "or on exchange basis" be inserted in paragraph 5 between the words "State" and "appropriate", with a view to bringing article 29 into line with article 28.

45. Mr. MIKULKA (Czechoslovakia) requested that a vote be taken on the Bangladesh amendment to article 29.

46. The CHAIRMAN invited the Committee to vote on the oral amendment proposed by Bangladesh and Tunisia.

The amendment was adopted by 45 votes to none, with 18 abstentions.

Article 29, as amended orally, was adopted by 44 votes to 21, with no abstentions, and referred to the Drafting Committee.

47. Mr. SUCHARIPA (Austria) said that his delegation had voted against draft article 29 because of the use of the word "relates" in paragraph 1(*b*) and because of the wording of paragraph 4. His delegation's reasons had been explained *in extenso* during the discussion on articles 25, 26 and 28 (25th and 29th meetings) and hence he would not repeat them.

48. Mr. PIRIS (France) said that his delegation had voted in favour of the oral amendment to paragraph 5 submitted by Bangladesh and Tunisia, which was based on the Pakistan amendment that had been adopted for paragraph 4 of article 28. His delegation had voted against article 29 as a whole, as it raised the same difficulties as articles 26 and 28. It could not accept the drafting of paragraph 4 and the vagueness of several of the expressions in the article.

49. Mr. ECONOMIDES (Greece) said that his delegation had voted against article 29 because of the content of paragraph 4, which was similar to paragraph 3 of article 28 and paragraph 7 of article 26 and could not be accepted for the reasons it had stated earlier. Moreover, the phrase "in an equitable manner", in paragraph 2, was imprecise.

50. Mr. EDWARDS (United Kingdom) said that his delegation had voted against article 29 at it could not accept paragraph 4 for the reasons which his delegation had explained during the discussion on article 14, paragraph 4, article 26, paragraph 7, and article 28, paragraph 3. His delegation also had difficulties with a number of vague expressions in other paragraphs, in particular in paragraph 2.

51. Mr. MONNIER (Switzerland) said that his delegation could not accept article 29 for the same reasons as those which had led it to reject article 28. Paragraph 4 of article 29 was similar to paragraph 3 of article 28.

52. Mr. de VIDTS (Belgium) said that he had voted for the oral amendment to article 29, which represented an improvement, but had voted against the article as a whole because of its reservations with respect to paragraph 4.

53. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had voted against article 29 for the same reasons as those which had led it to vote against article 26, paragraph 7 (28th meeting), and article 28, paragraph 3 (29th meeting).

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[1] General Assembly resolution 217 A (III).

New article 19 bis (Passing of State archives) (*continued*)*

54. Mr. EERSEL (Suriname) reminded the Committee that the representative of Algeria had suggested that a decision on new article 19 *bis* should be deferred until after the end of the consideration of Part III of the draft convention so that all the articles contained in that Part could be submitted together to the Drafting Committee.

55. The CHAIRMAN said that there was a link between the proposed article 19 *bis* and article 31 and it might therefore be appropriate to wait until the Committee came to consider the latter article.

56. Mr. SUCHARIPA (Austria) proposed that the consideration of new article 19 *bis* should be postponed pending the discussion on article 31.

57. Mr. MIKULKA (Czechoslovakia) said that his delegation had no objection to a decision on the inclusion of the proposed new article 19 *bis* being delayed. That did not, however, imply that a rigid parallelism must be followed and that similar provisions must be included in every part of the convention. In that connection, he referred to the reasons which had been given by his delegation during the earlier discussion (22nd meeting) for opposing the inclusion of new article 19 *bis* and which were based on the specific character of State archives.

58. Mr. LAMAMRA (Algeria) agreed with the view just expressed by the representative of Czechoslovakia and pointed out that it was borne out by the decision taken at the 23rd meeting concerning the proposed new article 19 *bis*.

59. Mr. JOMARD (Iraq) also agreed with the Czechoslovak representative's interpretation of the situation but wondered whether article 19 *bis* might not be referred to the Drafting Committee.

60. Mr. ECONOMIDES (Greece) said that he disagreed with those speakers who had argued that the insertion of an article 19 *bis* in section 1 of Part III was not necessary; he pointed out that a new article 8 *bis* had been inserted in section 1 of Part II. Having adopted article 20, the Committee was, in his view, under a moral obligation to adopt article 19 *bis*. He would defer to the Chairman's decision as to the precise point in the proceedings when consideration of article 19 *bis* should be resumed.

61. Mr. ROSENSTOCK (United States of America) agreed with the representative of Iraq that to refer the United States delegation's amendment involving the addition of a new article 19 *bis* to the Drafting Committee would be by far the best course. Failing a decision to that effect, he agreed that consideration of the amendment should be postponed until the Committee of the Whole had considered articles 31 and 32. In that connection, he asked whether his delegation would be expected to submit a formal amendment involving the addition of a new article 31 *bis*; the text of such an amendment would be identical, *mutatis mutandis*, with that of the proposed new article 19 *bis* submitted by his delegation in document A/CONF.117/C.1/L.42.

62. Replying to a question by Mr. PHAM GIANG (Viet Nam), he said that it was his delegation's wish to determine whether a provision similar to that adopted in respect of State property in article 8 *bis* was also to apply to State archives and State debts.

63. Mr. PHAM GIANG (Viet Nam) stressed that each Part of the draft convention dealt with a separate topic and had a unity of its own. The adoption of article 8 *bis* did not necessarily imply that analogous articles should be inserted in Parts III and IV.

64. The CHAIRMAN, replying to the question asked by the United States representative, said that, if the United States delegation wished to submit an amendment involving the addition of a new article in Part IV of the draft convention, it should submit the text of that amendment in writing.

65. Replying to a point raised by Mr. THIAM (Senegal), he said that postponement of further consideration of article 19 *bis* pending the discussion of articles 31 and 32 did not mean that a decision adopted in respect of one Part of the draft convention would be automatically adopted in respect of the other Parts. The proposal for the insertion of a new article 19 *bis* in Part III would be considered together with a possible new proposal concerning Part IV only for the sake of greater clarity and efficiency.

66. Mr. BRISTOL (Nigeria) said that the Committee was to be congratulated on having completed its work on Part III of the draft convention with the exception of a possible new article 19 *bis*. However, the status of works of art and art treasures in the event of a succession of States, a matter to which his delegation attached particular importance, had not been explicitly considered. He wondered whether the Expert Consultant would at some stage confirm his delegation's understanding, based on the International Law Commission's commentary on article 26, that works of art and art treasures, although not specifically mentioned, were in fact covered by the provisions relating to State property and State archives.

67. The CHAIRMAN suggested that further consideration of the proposed new article 19 *bis* should be deferred until after the Committee had considered articles 31 and 32.

It was so decided.

Article 30 (Scope of the articles in the present Part)

68. Mr. KIRSCH (Canada) suggested that, when considering Part IV (State debts) of the draft convention, the Committee should follow a somewhat different procedure from that adopted in respect of Parts II and III, by postponing the decision on each successive article until all articles in the Part had been discussed. Part IV was particularly complex because it dealt with triangular situations involving a third creditor State in addition to the predecessor and successor States. The suggestion, which was entirely motivated by a desire to facilitate the Committee's work, was, moreover, in the spirit of the decision just taken to defer consideration of article 19 *bis* until a suitable point had been reached in the consideration of Part IV. Furthermore, the suggested procedure would give delegations more time to concert their positions. While hoping that his sugges-

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* Resumed from the 23rd meeting.

tion would meet the Committee's approval, he would not insist upon it if it gave rise to any opposition.

69. Mr. MURAKAMI (Japan) supported the suggestion and pointed out that, in addition to being more complex—for the reason given by the Canadian representative—the articles in Part IV were also more closely interrelated than those of the other Parts.

70. The CHAIRMAN thanked the Canadian representative for his endeavour to facilitate and accelerate the Committee's work, but remarked that the Committee of the Whole was required by the schedule of work to refer certain articles to the Drafting Committee within certain time limits. In order to do so, it had first to adopt those articles. That being so, the Canadian suggestion did not seem realistic.

71. Mr. ROSENSTOCK (United States of America) said that he sympathized with the Canadian suggestion. Although the Committee had undoubtedly done a great deal of work, it had failed to narrow any gaps between divergent views. To identify such gaps and try to narrow them was possibly no less important than to finish on time. He suggested that the procedure proposed by Canada should be followed for a day or so.

72. Mr. EDWARDS (United Kingdom) agreed. It would not be very businesslike to adopt a decision on, say, article 31 (on definition of debts) before seeing what was to happen to State debts in specific situations.

73. Mr. USHAKOV (Union of Soviet Socialist Republics) endorsed the Chairman's view that the Canadian suggestion was unrealistic and added that, if the suggested procedure was followed, the work of the Conference and, in particular, of the Drafting Committee might suffer delay.

74. The CHAIRMAN pointed out that all previous codification conferences had disposed of the draft provisions before them one by one.

75. Mr. KIRSCH (Canada), withdrawing his suggestion, said that it had been designed to avoid a situation in which the Conference appeared to move forward without in fact progressing towards the elaboration of a convention commanding a wide measure of support.

76. The CHAIRMAN said that, if he heard no objection, he would assume that the Committee wished to defer a decision on article 30, and also on the corresponding articles 7 and 18, pending consideration of the general provisions in Part I (articles 1 to 6).

It was so decided.

Article 31 (State debt)

77. Mr. AL-KHASAWNEH (Jordan), speaking on behalf of the representative of Pakistan, who was unable to be present, said that document A/CONF.117/C.1/L.11 had been submitted by the Pakistan delegation not as a proposed amendment to the text of article 31 but as a request for clarification of the phrase "any other subject of international law". The meaning of the expression was not clear in the context of the article and was not elucidated in the commentary.

78. Mr. do NASCIMENTO e SILVA (Brazil), introducing his delegation's amendment (A/CONF.117/C.1/L.23), recalled that, at the International Law Commission's 1981 session, a proposed subparagraph (*b*) to article 31 reading "any other financial obligations chargeable to a State" had been rejected, although opinions on its merits had been equally divided. In his delegation's view, the subparagraph should have been included, in square brackets, in the draft of article 31.

79. When the subject had been raised at the Commission's 1671st meeting on 15 June 1981, the Special Rapporteur had pointed out that the problem could be resolved in a procedural manner, without raising the substantive issue, simply by deleting the subparagraph. He had said that such a course of action would not mean that the Commission was disregarding the problem of debts, but would show its concern to seek the minimum bases for an agreement, the lowest common denominator within the Commission.[2] The Special Rapporteur had admitted, however, that the Conference might decide to enlarge the scope of the future instrument in that respect.[3]

80. None of the members of the Commission who had spoken in explanation of their vote against the proposed subparagraph had admitted the possibility of non-payment of debt. The arguments advanced had been that the provision came within the scope of the internal law of the State that the law applicable to private debts was the law of contract and that such debts did not come within the scope of the draft convention.

81. In his delegation's view, the issues raised by article 31 were extremely serious and could not be resolved on a merely theoretical basis. They called for a pragmatic approach, particularly in view of the current economic and financial crisis. Many individual countries, in addition to such international institutions as the International Monetary Fund, the World Bank and the Organization of Petroleum Exporting Countries (OPEC) Fund, had been generous in according loans to newly independent and developing countries, but there were many cases in which the latter had been obliged to borrow from private external sources. The rejection of subparagraph (*b*) might have given the impression to banks and other similar bodies that it was inadvisable to lend to any State likely to be involved in a case of succession. In his delegation's view, it was thus in the interests of the developing countries and would enhance their creditworthiness to reassure such banks. From that standpoint it might even have been preferable to delete what would have become subparagraph (*a*), since subparagraph (*b*) would have covered every issue.

82. Mr. MARCHAHA (Syrian Arab Republic), introducing his delegation's amendment (A/CONF.117/C.1/L.37), said its object was to improve the text of article 31 by introducing two specific clarifications. First, the amendment stipulated that the obligation must have arisen in good faith and hence would exclude "odious debts", namely debts contracted by the predecessor State to the detriment of the successor State. Because a succession was not a sudden or fortuitous event, a predecessor State would have had ample op-

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[2] *Yearbook of the International Law Commission, 1981*, vol. I (United Nations publication, Sales No. E.82.V.3), 1671st meeting, para. 6.

[3] *Ibid.*, para. 7.

portunity to contract fictitious debts which would pass to the successor State unless the qualification "arising in good faith" was incorporated in the wording of article 31. The second condition, that financial obligations incurred by a State must be in conformity with international law, was a logical extension of the requirement of good faith. The definition proposed in his delegation's amendment would cover all financial obligations of a State, whether contractual or non-contractual, but would exclude any obligations which were not in conformity with international law.

83. Mr. MORSHED (Bangladesh) said that a definition of "State debt" must take into account the need to ensure that a successor State did not find itself encumbered by debts incurred by a predecessor State from which the successor State had not derived benefit. He appreciated the efforts made by the International Law Commission to arrive at a generally acceptable definition but reserved the right to comment on article 31 in greater depth at a later stage.

The meeting rose at 12.50 p.m.

31st meeting

Wednesday, 23 March 1983, at 3.20 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 31 (State debt) (*continued*)

1. Mr. NAHLIK (Poland), referring to the amendment submitted by Pakistan (A/CONF.117/C.1/L.11), said that it was, in fact, a request for clarification. He agreed that the phrase "any other subject of international law" presented problems both in the science of international law and in State practice in international relations. Before the Second World War it had been the almost universally accepted view that only States could be subjects of international law. Since then, however, with the proliferation of international organizations, the view had gradually been accepted that some major intergovernmental organizations could be considered subjects of international law, although their rights and obligations were not identical to those of States.

2. The question had then arisen whether there could be yet other subjects of international law. Views on that point were divergent. It was his view, however, that in a convention of a codificatory nature which was to have a longer life than a mere bilateral agreement, the way should be left open for future developments. That possibility had been reflected in many international instruments, including the 1978 Vienna Convention on Succession of States in Respect of Treaties,[1] article 3 of which explicitly mentioned agreements concluded between States and other subjects of international law. In view of such precedents, he considered that the possibility of there being "other subjects of international law" should be envisaged in the draft convention under discussion.

3. Mr. BEDJAOUI (Expert Consultant) said that whereas the definitions of State property and of State archives adopted by the International Law Commission served the aims or objectives of the draft convention without really defining the concepts, because they defined them only in relation to the predecessor State, the Commission had been more successful in defining State debt, because it had succeeded in defining it without any specific reference to the predecessor State.

4. He understood the Syrian Arab Republic's delegation's desire to clarify, through its amendment (A/CONF.117/C.1/L.37), the concept of State debt. The concept of good faith was commonly referred to in international instruments, one instance being article 2, paragraph 2, of the Charter of the United Nations. In such a sensitive convention as the one under discussion, a reference to good faith was even more necessary. However, he was afraid that the introduction of that concept might lead to difficulties. For example, a predecessor State might in good faith contract a debt which it considered necessary to its survival, whereas the successor State might in equally good faith consider such a debt odious.

5. Another problem which had been raised at the preceding meeting was that of categories of creditors. As indicated in paragraph 46 of its commentary on article 31, the International Law Commission had considered at length the advisability of retaining a subparagraph (*b*) which extended at the same time the definition of State debt to cover "any other financial obligation chargeable to a State", which was intended to cover State debts to private creditors, whether natural or juridical persons. However, the definition of succession of States in article 2 referred to the replacement of one State by another in the responsibility for the international relations of territory. That involved a juridical relationship governed by public international law and therefore excluded debts owed by the predecessor State to private creditors. Consequently, the International Law Commission had deleted the subparagraph (*b*) concerned. Being nevertheless concerned with the problem of private creditors, it had included certain safeguard clauses in the draft con-

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

vention, a general clause in article 6 and a special clause in article 34, paragraph 1.

6. Another question which had been raised concerned subjects of international law. In the complex terminology of international law, that term was considered to refer to States, certain entities such as the Holy See and international organizations of an inter-State nature. A fourth category consisted of certain inter-State organizations which were mainly regional in character but had supranational powers, such as the European Economic Community. National liberation movements had also been considered subjects of international law. In the context of the present draft convention it was unlikely that a predecessor State would incur a debt with respect to a national liberation movement but it might possibly undertake by treaty to pay such a movement a certain sum each year.

7. A much more controversial problem was that of transnational corporations. The work being done to develop a code of conduct for such corporations had led certain delegations to suggest that that activity conferred on them a certain international personality. Such a contention had been strongly rejected by other delegations which considered, on the other hand, that a contract between a State and a transnational corporation could by no means be compared to a treaty, in spite of extremes of doctrine and misguided arbitral jurisprudence. In any case, it was clear that in international law no single State had the power unilaterally to confer the status of subject of international law upon any entity.

8. It was obvious that in the draft convention the International Law Commission had understood the term "subject of international law" in its generally accepted meaning. To avoid any ambiguity the Conference might possibly prefer not to use the term "subject of international law" at all. He wished, however, to point out that article 3 of the 1969 Vienna Convention on the Law of Treaties[2] clearly referred to "other subjects of international law" as did article 3 of the 1978 Vienna Convention on Succession of States in respect of Treaties.[1]

9. Mr. SUCHARIPA (Austria) expressed regret that, despite the study of different categories of State debts contained in the International Law Commission's commentary on article 31, the Commission's detailed discussion of different types of State debt was not reflected in the wording of the articles in Part IV of the draft convention. That was all the more regrettable because the failure to distinguish between different categories of State debt had led to the otherwise unnecessary introduction into some articles of the concept of equity, which had no generally accepted meaning in international law. The fact that the categorization of State debts contained in the commentary to article 31 was not actually applied led to particular difficulties with respect to article 36, to which his delegation would refer later.

10. The wording of article 31 limited, for the purposes of Part IV, the definition of the term "State debt" to financial obligations of a State towards subjects of international law, thus excluding debts owed to natural or juridical persons which were not subjects of international law. He understood that the members of the International Law Commission generally agreed that by virtue of article 6 of the draft convention, the debts owed by a State to private creditors were legally protected and not prejudiced by the occurrence of a succession of States. Nevertheless, the problem of the inclusion of private loans in the definition remained to be discussed and his delegation therefore welcomed the Brazilian amendment (A/CONF.117/C.1/L.23).

11. His delegation had considerable difficulty in excluding debts owed to private persons from the scope of application of the draft convention. It considered that question to be of fundamental importance in view of the volume of credits extended to States from foreign private sources. It did not agree that that subject fell outside the scope of the draft convention. Its inclusion would bring Part IV into line with the definition of State property in article 8, which extended to property, rights and interests owned by the predecessor State, without distinguishing whether the corresponding debtors were subjects of international law or not.

12. He stressed, however, that the current wording of the provisions in Part IV of the draft convention ran counter to the interests of private creditors and would make it almost impossible for them to pursue their legitimate rights and interests. In particular, major disadvantages would arise for private creditors in the allocation of the State debt in accordance with article 35, paragraph 2, and article 38. In certain cases both the predecessor State and the successor State should be regarded as co-debtors. Therefore, if the scope of article 31 was extended to cover debts owed to private persons, as his delegation wished, consequential changes would have to be made in article 34.

13. At the current stage of the discussion, the Austrian delegation would vote in favour of the inclusion of a reference to debts owed to non-subjects of international law, but it might be obliged to change its position in the light of the discussion of articles 32 to 39.

14. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation supported the definition of State debt which had been proposed by the International Law Commission. The proposal of the Brazilian delegation to include in that definition the phrase "any other financial obligation chargeable to a State", namely, obligations towards entities which were not subject to international law, was unacceptable as a matter of principle, as being outside the scope of the draft convention, which could not be extended to cover matters governed by civil law, even if one of the parties involved was a State. A situation where a State had concluded a contract with a private person was regulated either by internal law or otherwise, as specified in the contract. Disputes arising from such contracts were likewise subject to settlement by recourse either to domestic juridical bodies or to commercial arbitration, as provided for in the contract concerned.

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[2] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

15. Secondly, the Brazilian amendment would inevitably include in the definition obligations of the State to its own natural and juridical persons, arising in particular in connection with internal loans. Such obligations were exclusively within the competence of the State concerned. Acceptance of the amendment would therefore constitute inadmissible interference in the internal affairs of States. The question of the rights and obligations of natural and juridical persons was dealt with in article 6.

16. Referring to the amendment submitted by the Syrian Arab Republic, he said that his delegation had no objection to the inclusion of the phrase "in conformity with international law", although it considered that concept to be implicit in the original text. The use of the words "arising in good faith" could present difficulties, however, inasmuch as obligations could arise also as a result of a decision by a competent international body.

17. Consequently, his delegation supported the text of article 31 proposed by the International Law Commission.

18. Mr. ZSCHIEDRICH (German Democratic Republic) noted that there was a conflict between State practice and international law doctrine with regard to succession in respect of State debts. Hence no generally recognized norms of customary law governing the passing of such debts had so far evolved, as had happened to some extent in the case of State property. The draft articles in Part IV constituted a further development of contemporary international law which his delegation welcomed as helpful in removing existing legal uncertainties. It agreed in principle with the definition of State debts in article 31, which was consistent with the decisions taken in respect of treaties and archives in that it dealt only with the international legal effects of succession. The term "financial obligation" was a necessary complement to the definition. His delegation furthermore fully agreed with the views concerning delictual debts expressed by the International Law Commission in paragraph (36) of its commentary.

19. Turning to the amendments to article 31, he said that his delegation saw merit in the Syrian proposal to add the phrase "in conformity with international law" in order to reinforce the concept that State debts of the predecessor State which were contrary to generally recognized international law and to the major interests of the successor State were not covered by article 31 and the subsequent articles. His delegation had initially found the other addition proposed in the Syrian amendment—"in good faith"—somewhat vague but it had been convinced by the Syrian representative's explanation of its meaning. The Syrian amendment enriched article 31 and his delegation would support it.

20. The Brazilian amendment reintroduced the original subparagraph (*b*) of article 31 which had been deleted from the final draft of that article after prolonged discussion both in the International Law Commission and in the Sixth Committee of the General Assembly of the United Nations. To impose upon the successor State an international obligation to leave unchanged the internal legal relationships of the predecessor State would be an unacceptable encroachment upon the sovereignty of the former and hence would be incompatible with principles of the sovereign equality of States and non-intervention in internal affairs. A successor State must have the inalienable right to establish its own political and legal system, which included regulating, at its own discretion, its relationship under civil law with natural or juridical persons.

21. His delegation understood the concern expressed by some delegations with regard to the legal status of foreign private creditors in the event of State succession. The safeguard clause in article 6 met such concern to some extent. It was not admissible, however, subsequently to transform what were originally relationships under civil law into relationships governed by international law, thus restricting unilaterally the rights of the successor State. His delegation welcomed article 31 in that it limited the subject matter of the convention, as a matter of principle, to international debt relationships.

22. Mrs. THAKORE (India) said that her delegation supported the restrictive definition of State debts in article 31, which kept the topic of State succession within its proper limits. The International Law Commission's commentaries on articles 6, 31 and 34 amply justified the definition proposed and rejection of the broader definition of State debts which had been favoured by certain delegations. The interests of international creditors were adequately protected in article 34 and any agreement which departed from the rules in that article had to be accepted by the third State or other subject of international law concerned. Article 6 explicitly provided for the legal protection of the interests of natural or juridical persons. She did not think that the present text of article 31 would limit the capacity of developing countries to attract credit.

23. The Indian delegation had nothing to add to the Expert Consultant's comments on the Syrian amendment. With regard to the Brazilian amendment, she recalled that a similar provision had been rejected by the International Law Commission in second reading. It had been generally agreed that debts owed by a State to private creditors were legally protected and not prejudiced by a succession of States—a position reflected in the adoption by the Commission of article 6 as a safeguard clause. Those members of the Commission who had considered that the definition of State debts should be limited to financial obligations arising at the international level had contended that debts to private creditors fell outside the scope of the convention. The adoption of the Brazilian amendment would raise new issues that the Committee of the Whole had no time to consider. In that connection, she read out observations made by the Special Rapporteur during the discussion of the relevant article at the 1671st meeting of the International Law Commission.[3]

24. The Special Rapporteur had suggested that the Commission might resolve the problem in a procedural manner by deleting the provision concerned, a course which would show its concern to seek the lowest com-

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[3] *Yearbook of the International Law Commission, 1981*, vol. I (United Nations publication, Sales No. E.82.V.3), 1671st meeting, paras. 4-7.

mon denominator within the Commission by limiting the content of the article to the present text of article 31. Such a solution had been suggested to him by the written comments of some governments, including that of Italy. She said she would leave the members of the Committee of the Whole to draw their own conclusions.

25. Mr. EDWARDS (United Kingdom) said that his delegation supported the Brazilian amendment. In the Sixth Committee of the General Assembly the United Kingdom had expressed the opinion that the draft convention should cover not only inter-State debts but also debts whose creditors were alien individuals or corporations, in view of the fact that by far the larger part of State borrowing came from sources other than States and international organizations. If the Brazilian amendment was not accepted, the draft convention would have a serious gap. If it was adopted, certain substantive adjustments would have to be made to articles 34, 35 and 36.

26. His delegation could not support the Syrian amendment which would introduce into the definition of State debts—which should be objective and factual—terminology that was vague, subjective and open to abuse.

27. He had understood the Expert Consultant to say that a number of bodies, including transnational corporations, were subjects of international law. His delegation did not accept that view.

28. Mr. ABED (Tunisia) stressed the importance attached by his delegation to article 31, which contained key provisions governing the application of the rules and principles that would be adopted regarding the effects of a succession of States on State debts.

29. The development of financial relations was one of the most prominent features of modern life. International loans within the framework of inter-State co-operation and co-operation between States and international organizations had become customary for all countries. That situation gave rise to new practices, institutions and legal difficulties. The International Law Commission had appreciated the importance of that situation and had provided a very substantial commentary on article 31, which would facilitate the adoption of a clear, unambiguous definition. His delegation endorsed the views of the Commission. Nevertheless, in order to limit the legal problems which might arise in applying the expression "any other subjects of international law", he thought that the Drafting Committee should be requested to explicate that term.

30. With regard to the Brazilian amendment, which extended the definition of State debts to include natural or juridical persons under private law, he pointed out that the International Law Commission had stated that a succession of States did not affect debts of that type, a position confirmed by the inclusion of article 6 in the draft convention as a safeguard clause. His delegation considered that such other debts fell outside the scope of the draft convention. Natural or juridical persons under private law had at present means of pressing their claims directly against States. His delegation was therefore unable to support the Brazilian amendment.

31. The intention of the Syrian amendment was commendable, but the addition to article 31 of language which was vague in its interpretation might impede application of the effects of a succession of States in respect of State debts.

32. Mr. OESTERHELT (Federal Republic of Germany) said that the Brazilian amendment to article 31 sought to correct an imbalance which had already been remarked upon on numerous occasions in various bodies. The concept of State property comprised debt claims against private debtors whereas the concept of State debts did not comprise debts owed to private creditors. If article 31 remained as proposed by the International Law Commission, private creditors would fall outside the scope of the convention. That, of course, did not signify that they would not be protected. Their rights and obligations in that event would simply be determined by the general international law applicable in such cases, as in all other cases where the convention did not apply because the States concerned were not parties to it. Article 6 contained a necessary clarification in that regard.

33. Referring to the Syrian amendment, he pointed out that the International Law Commission had wisely avoided burdening the definition of State debts with the question of "odious debts": a definition should be free of elements not pertaining strictly to the definition itself. His delegation endorsed the Commission's decision not to include any provision concerning odious debts. In paragraph (44) of its commentary the Commission characterized State debts as being "international" financial obligations, but that left open the question whether the debtor-creditor relationship was to be governed by international law or whether it would suffice, as the text seemed to indicate, that the debtor and creditor were subjects of international law. He would welcome comments on that point in light of the fact that the term "treaty" was defined in article 2 of the 1978 Vienna Convention on Succession of States in Respect of Treaties as "an international agreement . . . governed by international law". In his comments, the Expert Consultant had seemed to imply that the same limitations applied to the draft convention. His delegation foresaw difficulties, not only in that respect, if both instruments were applicable to a given case, in view of the varying degree of parallelism between them.

34. Mr. BEDJAOUI (Expert Consultant), referring to the remarks made by the representative of the United Kingdom, said that he had not meant to say that the International Law Commission or he himself had maintained that transnational corporations were subjects of international law; rather he had said the opposite.

35. Mr. MONNIER (Switzerland) said that the representative of Poland and the Expert Consultant had both referred to earlier instruments to support the conclusion that the expression "any other subject of international law" was not a new one. The provisions of those instruments, however, were not the same as those contained in article 31 of the present draft convention. Article 31 contained the formula "State, an international organization or any other subject of international law". Article 3 of the 1969 Vienna Convention made no mention of international organizations, but it was understood in that context that "other subjects of international law" included international organizations, which the International Law Commission had

at the time felt should be covered. The Swiss delegation, like that of Pakistan, wondered therefore what was intended by the use of the expression "any other subject of international law" in the context of article 31. The Expert Consultant had referred to States and other international organizations and entities, and had also mentioned national liberation movements and transnational corporations, but there appeared to be no complete unanimity in that connection and the Swiss delegation doubted whether it was wise to attempt any enumeration.

36. The Expert Consultant had observed that the expression also marked the international nature of the problems arising as a result of the succession of States and had referred to the definition of succession of States in paragraph 1(*a*) of article 2, which was "the replacement of one State by another in the responsibility for the international relations of territory". That definition also appeared in the 1978 Vienna Convention, but while it was appropriate in a convention dealing with the succession of States in respect of treaties, he wondered whether it was really appropriate in a convention regulating succession of States in respect of State property, archives and debts. Since the present convention contained many references to internal law, another definition might be more appropriate.

37. The Expert Consultant had concluded that succession of States established a legal relationship which was the subject of international law. If article 31 was approached in that light it would be possible to avoid the necessity of stating whether the creditor should be a subject of international law and deciding whether or not the legal relationship involved was the subject of international law. That approach was all the more correct since contracts between a State and a private or juridical person could be either fully or in part the subject of international law. That approach finally gave rise to the question of internationalized contracts, which were a reality of international life and which were becoming increasingly important in, for example, investment loan contracts which referred to the internal law of one or more States and, increasingly, to international law. The proper legal approach therefore appeared to be to analyse whether or not the legal relationship involved was sufficient *vis-à-vis* international law. Such an analysis would take account of the realities of international relations and would avoid the sensitive issue of whether or not transnational corporations were subject to international law. In the light of those arguments, therefore, the Swiss delegation supported the Brazilian amendment to article 31.

38. There were two other legal arguments in favour of the Brazilian amendment. Paragraph (46) of the International Law Commission's commentary on article 31 referred to the divergence of opinion within the Commission regarding the need for a provision such as that now proposed by Brazil. Some of those who had favoured such a provision had argued that the deletion of the relevant subparagraph would result in a contradiction between the definition of State debt in article 31 and that of State property in article 8. That argument was an important one which should be borne in mind. The definition of State property covered property, rights and interests, defined in accordance with the internal law of the predecessor State, and article 8 did not raise the problem of whether debtors were or were not subjects of international law. The exclusion of private creditors from the definition of "State debts", therefore, left the definition in clear contradiction with the International Law Commission's definition of "State property", which the Committee of the Whole had already accepted.

39. The exclusion of private debts would be contrary to the ideas and concepts underlying and reflected in the Commission's draft. In the introduction to the report of the International Law Commission on the work of its thirty-third session[4] emphasis had been placed on the principle of equity not only in the sense of *ex aequo et bono*, which required the express agreement of the parties, but also as developed by the International Court of Justice as a rule of international law. The exclusion of certain categories of creditors in the context of the present draft convention would therefore be in contradiction with that principle. There were, moreover, a number of legal considerations which justified and clarified the inclusion of private debts in the definition of State debts in article 31, and his delegation could not support the idea that there were legal concepts opposed to such inclusion. The Expert Consultant had described the succession of States as a tricky problem because of its political dimension. There were certainly no legal arguments to oppose the inclusion of private debts in the definition of State debts.

40. Referring to the Syrian Arab Republic's amendment, he wondered whether it was necessary or useful to include the expression "in good faith", since good faith prevailed whenever financial obligations arose, and was in fact the basis of international law, as the Expert Consultant had observed. Furthermore, the reference to international law was meaningful only if there was a legal arbitration body which could decide, in accordance with international law, whether any financial obligation had arisen in connection with that law.

41. Mr. KADIRI (Morocco) said that article 31 referred to financial obligations in order to make it clear that State debts had a pecuniary aspect, and it divided financial obligations into three categories. "State debts" was understood as being any financial obligation of one State *vis-à-vis* another State, international organization or any other subject of international law. His delegation regretted the final decision of the International Law Commission to delete the word "international" qualifying "financial obligation" in article 31, since it considered that that word more explicitly described the nature of the obligations involved. Without it, the term "financial obligation" could be interpreted as meaning an obligation towards any juridical or natural person, in particular those with the nationality of the predecessor State, and would undoubtedly give rise to ambiguity. The Commission had held that to describe a debt as a legal obligation for a certain subject in law provided a certain definition. While the Commission might have been right in stating that State debts were those contracted by one State *vis-à-vis* another State or

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[4] *Ibid.*, vol. II (United Nations publication, Sales No. E.82.V.4 (Part II)), paras. 76 *et seq.*

an international organization, the same was not true where any other subject of international law was concerned. As the delegation of Pakistan had indicated at the previous meeting, the expression required further clarification.

42. The concept of "any other subject of international law" had been clearly explained by the International Court of Justice in its opinion of 11 April 1949[5] which concerned United Nations officials. Neither legal nor natural persons in private law immediately and fully enjoyed the status of a subject of international law. There were several reasons for taking such a restrictive view of the international financial obligations of the successor State in the context of a succession of States. Succession to debts generally took place without giving rise to insoluble disputes, but through amicable arrangements touching on the law governing investments and succession to public debts. It would therefore be wrong to see in that approach any attempt on the part of the developing countries to escape the obligations contracted by them, or by the predecessor State on their behalf. Either the debt in question was covered by a guarantee from the creditor State under an agreement with the beneficiary State, in which case there was a succession to treaties in the conditions established by the 1978 Vienna Convention, or else the debt was contracted with private persons without previous or concomitant State intervention, any litigation being then subject to the rule of exhaustion of internal recourse. If necessary, recourse might be had to diplomatic protection, which might bring into play the international responsibility of the debtor State. Article 6 provided a very relevant safeguard in that respect.

43. In view of the very nature of the subject to be settled and the different nature of the parties involved, codification in the field under discussion depended more on commercial international law than on general international law.

44. The conclusions which could be drawn from the decision of the International Court of Justice in the Barcelona Traction case[6] were quite positive as far as international responsibility was concerned and *a fortiori* in respect of the succession of States. Morocco's experience in that connection had been most instructive. It had involved the gradual recovery and control of the national economy through lengthy financial litigation, only recently concluded, with the two former colonial powers. It was therefore as a matter of principle that his delegation was anxious to see the word "international" inserted before the words "financial obligation of a State" in article 31. His delegation did not share the view of some members of the Commission that the debts of the successor State also included the debts of private persons.

45. The transferability of State debts covered by a convention which would by definition be a convention between States, and governed by *jus gentes*, could not include the financial obligations contracted by subjects of international law. That did not, however, exclude financial international law which was based on public international law. His delegation consequently supported the restrictive concept of a subject of international law, and supported the definition of "State debts" as it was explained in the International Law Commission's commentary on article 31. It regretted that the Commission had not seen fit to include in the draft convention a separate provision concerning "odious debts".

46. The Moroccan delegation was unable to support the Brazilian amendment, as it went beyond the real scope of article 31 in particular and beyond the scope of the draft convention as a whole. The Syrian amendment made reference to an essential principle of international relations, the principle of good faith, which was already codified in article 26 of the 1969 Vienna Convention on the Law of Treaties. His delegation therefore fully supported that amendment.

47. Mr. NATHAN (Israel) said that his delegation had noted that the enumeration of debts contained in paragraph (13) of the International Law Commission's commentary included contractual debts and delictual or quasi-delictual debts. His delegation fully associated itself with the inclusion of delictual or quasi-delictual debts within the category of debts.

48. The view expressed in paragraph (36) of the commentary on article 31, that delictual debts arising from unlawful acts committed by the predecessor State raised special problems with regard to the succession of States, the solution of which was governed primarily by the principle relating to international responsibility of States, appeared to be supported by a reference to a rather old authority in international law on State succession, namely a work published in 1907 by A. B. Keith. The Israeli delegation disassociated itself from that notion, which was not in line with modern international law as reflected in some of the more modern decisions on the subject, such as in the Lighthouse cases arbitration,[7] and in the works of D. P. O'Connell and Feilchenfeld. It was true that the existence or otherwise of a debt arising *ex delicto* or quasi *ex delicto* came within the ambit of State responsibility. But once responsibility for the delictual debt had been established, however, the question of whether or not there was succession to such a financial liability clearly fell within the ambit of the subject of State succession and thus within the scope of the present draft convention.

49. His delegation fully supported the Brazilian amendment and considered that the draft convention, and in particular Part IV, would be incomplete and deficient if the definition of "State debt" were limited to States or other subjects of international law. His delegation fully associated itself with those members of the International Law Commission who had voted against the deletion of the relevant subparagraph (*b*) and whose views were set forth in paragraph (46) of the Commission's commentary on article 31. From the legal standpoint it was true to say that financial obliga-

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[5] *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion (I.C.J. Reports 1949)*, p. 174.

[6] *Barcelona Traction, Light and Power Company Limited, Judgment (I.C.J. Reports 1970)*, p. 3.

[7] United Nations, *Reports of International Arbitral Awards*, vol. XII (United Nations publication, Sales No. 63.V.3), p. 161.

tions of a State towards a person not subject to international law did not arise at the international level and as such were not subject to international law.

50. On the other hand, while the debt as such and the interpretation and application of the contract creating the debt were not subject to international law, the effects of the succession of States on the financial obligations of the debtor State, whether towards other States or towards natural or juridical persons, were indeed a proper subject of international law and should fall within the scope of the draft convention. Moreover, international conventions governing succession of States in respect of debts invariably included debts of any category without distinguishing between debts owed to another State or those owed to a private or juridical person. It also appeared that the volume of credit extended to States by foreign private sources exceeded the volume of credit extended by governmental sources. It was therefore extremely important that the draft convention should give proper attention to that part of State debts which was owed to private creditors.

51. He fully agreed with the suggestion that the whittling down of the definition of "State debts" would create an inconsistency between the definition of "State debts" in article 31 and that of "State property" in article 8, which also extended to the property owned by the predecessor State in accordance with its internal law. That definition would obviously include debt claims and did not distinguish between the personality of the debtor State or private or juridical persons, and could consequently give rise to a situation in which debt claims towards private debtors were included while State debts towards private debtors were excluded.

52. He doubted the validity of the argument that the protection extended in article 6 to private creditors, whether juridical or private persons, was sufficient. The representative of the Federal Republic of Germany had rightly pointed out that private creditors would have to resort to the general rules of customary international law in such a case, and those rules were highly intricate, complicated, often ambiguous and unclear. That was particularly true in the case of the dissolution of a State, where the juridical personality of the original debtor disappeared altogether, leaving the private creditor with no other recourse than to address itself to the complicated situation between the various successor States following the dissolution of the dismembered State.

53. The Syrian amendment was in his view unnecessary and perhaps even harmful. It was unnecessary because the notion of good faith underlay every international or private contractual obligation, as did the invalidation of contracts created under conditions of fraud, duress or coercion. The amendment might even undermine the very notion of *pacta sunt servanda*.

54. His delegation disassociated itself from the view of the Expert Consultant that transnational corporations and national liberation movements had the status of subjects of international law. That point was not included in the International Law Commission's commentary and his delegation therefore assumed and understood that that view was not necessarily the view of the International Law Commission as a whole.

55. Mr. ECONOMIDES (Greece) said that, in his delegation's view, the Brazilian amendment did indeed fall within the scope of the draft convention, which was designed to establish the rights and obligations arising from State succession in its various aspects. Contemporary law and practice in respect of State succession did not distinguish between matters which were governed by internal law and those which were the subject of international law. That situation, which had been recognized in the definitions of State property and State archives, in articles 8 and 19 respectively, should, for consistency, also be reflected in the definition of State debt. The Brazilian amendment sought to correct a major deficiency in the draft convention and his delegation would therefore support it.

56. With regard to the amendment submitted by the Syrian Arab Republic, his delegation was sympathetic to the inclusion of the phrase "in conformity with international law", but considered an explicit reference to good faith in article 31 superfluous: that was surely an element inherent in the concept of international law.

57. Mr. YÉPEZ (Venezuela) said that his delegation supported the International Law Commission's text of article 31, which demonstrated a balanced approach to a complex matter. It also supported one element of the amendment submitted by the Syrian Arab Republic, namely, the inclusion of the phrase "in conformity with international law", which improved the Commission's draft. A specific reference to good faith in article 31 could, on the other hand, give rise to problems. His delegation would therefore like separate votes to be taken on those two aspects of that amendment.

58. His delegation's understanding of the purpose of the Brazilian amendment was that it had been submitted in order to ascertain the views of the Committee of the Whole on a subject which had given rise to controversy in the International Law Commission. While there was merit and logic in the position of those who had favoured adoption of the proposed new subparagraph (*b*), his delegation, having weighed the pros and cons, had opted in favour of dispensing with that provision. As the Expert Consultant had explained, State debts owed to private natural or juridical persons were adequately safeguarded elsewhere in the draft convention.

59. Most of the arguments advanced in favour of a reference to State debts owed to private creditors —such as the need to maintain sources of credit—were based on economic rather than legal considerations. Finally, the definition of State debt, which was a clear and independent concept, should be judged on its own merits, and not according to whether it was in complete alignment with the definition of State property.

60. Mr. do NASCIMENTO e SILVA (Brazil) said that his delegation could support to some extent the amendment submitted by the Syrian Arab Republic although it felt that a specific reference to good faith in article 31 was perhaps excessive.

61. The debate on the amendment submitted by his own delegation had confirmed its view that such a modification of the article was necessary. It was important to take a practical view of the matter, bearing in mind that international law had often been criticized

for not being in touch with modern reality, where financial, commercial and economic considerations loomed large.

62. Referring to some of the points mentioned during the discussion, he said it was not correct to state that the International Law Commission text represented a consensus. There had in fact been a tied vote in the Commission on the subject. It was for that reason that his delegation had thought it important to raise the question again in the Committee of the Whole. The representative of India had referred to a procedural justification for the deletion of the earlier subparagraph (*b*), but it was equally possible to find a justification for the retention of that provision.

63. The comment had been made that the Brazilian amendment ran counter to the sovereign rights of successor States. On the contrary, in many cases a newly independent State preferred to go to private sources of credit and pay higher interest rates rather than suffer a heavy political burden which could in fact be a greater menace to its sovereignty.

64. While the position of his delegation remained flexible, bearing in mind that the consideration of article 6 had yet to take place, and that there had been considerable support for the Brazilian amendment, he did not propose at present to withdraw that proposal.

65. Mr. SKIBSTED (Denmark) said that his delegation attached the utmost importance to the balance and internal consistency of the future draft convention. The definition of State property in article 8 clearly extended to financial claims towards natural or juridical persons. He therefore had difficulty in understanding why the International Law Commission had decided not to include in the definition of State debt reference to any financial obligation chargeable to a State other than those owed to another State, an international organization or any other subject of international law. His delegation was sympathetic to the Brazilian amendment, which it believed would make article 31 more balanced and logical.

66. So far as the amendment submitted by the Syrian Arab Republic was concerned, his delegation would be unable to support the addition of the phrase "arising in good faith", which it considered vague and imprecise.

67. Mr. SOKOLOVSKI (Byelorussian SSR) said that, in his delegation's view, the International Law Commission had been right to exclude financial obligations towards natural or juridical persons from the definition of State debt. That approach was in conformity with the Commission's mandate.

68. His delegation accordingly supported the text proposed by the International Law Commission and could not accept the Brazilian amendment, which sought to include in the definition of State debt matters which were not the subject of international law. Debts owed to private creditors, which should be settled in accordance with the internal law of the States concerned, were covered by article 6.

69. His delegation could support the amendment submitted by the Syrian Arab Republic, but considered the inclusion of the phrase "arising in good faith" to be unnecessary.

The meeting rose at 6 p.m.

32nd meeting

Thursday, 24 March 1983, at 10.20 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 31 (State debt) (*continued*)

1. Mr. ROSENSTOCK (United States of America), referring to the Syrian Arab Republic's amendment (A/CONF.117/C.1/L.37), said that the amendment was open to objection from a purely legal point of view, in that it referred to obligations which were binding only subject to certain conditions. An obligation that was defective was not an obligation. As the representative of Brazil had pointed out, the text of the draft convention was replete with references to agreements but nowhere was it specified that those agreements had to fulfil certain conditions in order not to be open to challenge on one or another ground of invalidity. The representative of the Soviet Union had clearly outlined at the previous meeting the difficulties which would arise if the phrase "in good faith" were included in article 31, as was proposed in the Syrian amendment.

2. Turning to the question of debts to creditors other than States or international organizations, he said that such debts were of even greater importance than debts to States and that to omit mention of them would inevitably tend to trivialize the convention. The arguments advanced for excluding private debts from the scope of the definition were so unconvincing as to be transparent, and were full of inconsistencies. Reference had been made, for example, to paragraph 1(*a*) of article 2, with the suggestion that private debts did not relate to "the replacement of one State by another in the responsibility for the international relations of territory". If it were indeed the intention to limit the scope of the convention in that way, the effect would be to exclude from its ambit a good deal of State property, both movable and immovable, and also archives, which had little or no connection with "international rela-

tions". In his delegation's opinion such an interpretation would be absurd.

3. It had also been maintained that debts to creditors other than States or international organizations were outside the scope of international law. If that assertion were true, large areas of international law, including much of the law relating to State responsibility, would be invalidated.

4. In view of the inadequacy of the arguments put forward for excluding private debts from the scope of the draft, his delegation favoured the amendment submitted by Brazil (A/CONF.117/C.1/L.23). The Expert Consultant had rightly pointed out (31st meeting) that paragraph 1 of article 34 clearly established that private debts were not affected by a succession of States and that the paragraph covered not only debts to States, international organizations or other subjects of international law, but also "any other financial obligation chargeable to a State". That provision would mitigate any damage that would be caused by failure to adopt the Brazilian amendment. The fact remained, however, that the omission of a reference to private debts in a convention dealing with succession of States would render that convention inherently trivial.

5. Mr. BOSCO (Italy) said that he agreed with the Expert Consultant, the representative of the United States and others that the Syrian delegation's proposal for adding a reference to "good faith" in article 31 was unjustifiable. While the concept of good faith was long-established and had been embodied in numerous multilateral instruments such as the Charter of the United Nations and the 1969 Vienna Convention,[1] in the very different context of article 31 it would—if the Syrian delegation's proposal were approved—constitute the criterion for determining whether or not a State debt existed, with all the complexities of interpretation that such a criterion would entail. It would be very difficult, for example, to establish whether an agreement concluded many years previously had or had not been in good faith. In his delegation's opinion it was undesirable to encumber the text of the convention, which was difficult enough as it stood, with further complexities.

6. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation had no difficulty in accepting the definition given in article 31 as proposed by the Commission. However, the Syrian delegation had explained (30th meeting) that its amendment related solely to contractual debts, as distinct from delictual or quasi-delictual debts which *ex hypothesi* were not governed by the criterion of good faith, and that odious debts, such as those arising from military expenditure incurred in a war, for the same reason, would not pass to a successor State. On that understanding, his delegation could support the Syrian amendment.

7. Citing paragraph (36) of the commentary, he added that, in his delegation's opinion, claims for reparation of war damage based on the principles of delictual responsibility passed to the successor State in respect of territory affected by the succession.

8. In conclusion, he said that his delegation could not accept the amendment proposed by Brazil because it exceeded the scope of the convention.

9. Mr. KIRSCH (Canada) said that, from a practical point of view, article 31 as it stood seemed to ignore the realities of international relations by failing to cover the financial obligations of States to private creditors, an omission which would seriously vitiate the effectiveness of the convention, since loans by States to other subjects of international law accounted for only a minority of all loans.

10. The definition of "State debt" also disturbed the balance and equity of the draft articles. There was a contradiction between article 31 and article 8, in that the latter defined State property without imposing comparable limitations: State property, rights and interests were to be transferred regardless of their origin.

11. One argument put forward in the course of the discussion on article 31 was that the convention applied solely to inter-State relations, thus excluding private debts. That argument was weakened by the fact that article 8 contained a much broader definition of property, and also by the fact that international financial obligations were subject, wholly or in part, to international law at some point during their existence. A second argument was that the article did not prejudice the rights of private creditors, who enjoyed general protection under article 6 and more specific safeguards in article 34.

12. While reserving its position on article 34, his delegation felt that under the convention private creditors should remain subject to the rules of general international law. The question raised by the Brazilian amendment, which his delegation supported, was whether or not the convention was intended to establish a régime generally applicable to all the situations arising from a succession of States. His delegation would be unable to accept article 31 unless the Brazilian amendment was adopted.

13. His delegation found the Syrian amendment acceptable in substance but felt that the wording might create more problems than it resolved.

14. His delegation would prefer the definition in article 31 to refer to "States and other subject of international law", which was the expression used in article 3 of the 1978 Vienna Convention on Succession of States in Respect of Treaties.[2] The formulation in article 31 as it stood was insufficiently comprehensive and could lead to major differences of interpretation.

15. Mr. PHAM GIANG (Viet Nam) said that the International Law Commission had examined all aspects of the problem of the definition of "State debt", and that it would be difficult to make substantive improvements to the text of article 31 as submitted. Within the Commission itself there had been two differing approaches to the issue. Some members had wanted a broad definition which would cover not only State debts but debts owed to other natural and juridical

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[1] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

persons. The reasons advanced were familiar, particularly the argument that guarantees should be provided to private creditors lending sums to developing countries. On the other hand, other members had thought it best to stay within a narrower conception of the scope of the future convention by limiting the definition of State debts to financial obligations arising between subjects of international law.

16. In his delegation's view, the article as finally adopted by the Commission had the merit of avoiding ambiguity and should not lightly be amended. He pointed out that the draft provided safeguards for private creditors in articles 6 and 34, which should allay the concerns expressed by some delegations. His delegation could not therefore support the amendment proposed by Brazil.

17. While sympathizing with the motives of the Syrian delegation in submitting its amendment and agreeing that there was justification for including the phrase "in conformity with international law" in article 31, he felt that the term "good faith" might, as the Expert Consultant had said, lead to ambiguity.

18. Referring in conclusion to the question of odious debts, he said that his delegation regretted that articles C and D on the definition and non-transferability of such debts, which had at one time been proposed by the Special Rapporteur (see paras. (41) and (42) of the International Law Commission's commentary on article 31), could not have been included in the draft. Odious debts arose out of situations that contravened international law and the principle of the right to self-determination, and his delegation felt that there was widespread support for a provision on that subject.

19. Mr. TEPAVITCHAROV (Bulgaria) said that the definition in article 31 made it clear, first, that a State debt was an obligation of a monetary character and, second, that the parties to an international financial obligation must be subjects of international law. That approach was consistent with the scope of the future convention.

20. The International Law Commission had deliberately excluded from the definition debts owed by a State to private creditors, regarding them as extraneous to the scope of the draft. The question had evoked serious controversy and the Commission had evidently not felt able to recommend a codification of international law in the area of State debts to private creditors to the extent some members believed necessary. His delegation felt that there were no generally recognized rules of international law on the matter, and agreed with the Expert Consultant that private creditors were not left unprotected under the convention: in particular, it had been pointed out that articles 6 and 34 made provision for the rights and obligations of natural or juridical persons. Also, since a State's debt to a private creditor was always contractual, and since such contracts of necessity contained clauses on settlement of disputes and on the applicable law (which was normally the domestic law of a given State), international law could not be invoked in such cases. If the general rules of international law were to be applied to protect the rights of private creditors, they would apply in areas not covered by the contract, and only to the extent that international law was in fact applicable in those areas.

21. The draft convention introduced clarity and stability into the definition of State debt in the context of the topic of succession of States. Since the convention would not operate retroactively, private lenders would always take into account the realities of the legal situation and insist on adequate guarantees. His delegation could not see how the exclusion of debts owed by a State to private creditors from the scope of the convention would jeopardize the ability of newly independent States to enter into agreements with private creditors. It should also be borne in mind that, as the Expert Consultant had pointed out, the State debt referred to in the definition was that of the predecessor State. There was thus no legal vacuum.

22. There was nothing in the convention that would adversely affect the way in which the predecessor and successor States dealt with debts to private creditors, and his delegation believed that at least some such debts would be the subject of the agreements referred to in the relevant articles in Part IV. However, in the rare cases where there was no agreement, the private debts should not pass automatically to the successor State. For that reason, his delegation found it difficult to regard the Brazilian amendment merely as an attempt to remedy an omission in the draft.

23. Some delegations had argued that it was necessary to ensure internal consistency between the definition of State debt and that of State property. His delegation, however, felt that each Part was separate and that there might be differences of definition owing to the nature of the subject matter of the various Parts.

24. Turning in conclusion to the Syrian amendment, he said that while he appreciated the motive for the reference to the concept of "good faith", its inclusion in article 31 might not be appropriate. On the other hand, the reference to international law simply made explicit what had previously been implicit, and his delegation could see no objection to its inclusion.

25. Mr. PIRIS (France) said that his delegation had an open mind about article 31 and could accept any definition agreeable to the largest number of States, provided it was clear and logical.

26. His delegation thought that two solutions were possible: to limit the definition of "State debt" in article 31 to the financial obligations of one State towards another State or an international organization; or to widen the definition by including the debts of a State towards private natural and juridical persons. His delegation considered that whatever the solution adopted, article 31 would need to be redrafted.

27. Before he went on to analyse article 31, he wished to point out that since there was no generally accepted definition of the term "subject of international law" in international law, to adopt that term would lead to many difficulties. In that connection, he referred to the statements of the representatives of Switzerland [31st meeting] and Jordan [30th meeting] and noted that the Special Rapporteur of the International Law Commission had at one time considered deleting the term.

28. If the restricted definition of the debt were to be adopted, the convention would in no way be concerned with the debts of private natural and juridical persons. During the discussion, it had been stated in that con-

nection that articles 6 and 34 were safeguard clauses. His delegation had noted those statements but nevertheless believed that on that assumption the convention should contain an article clearly stating that nothing in that convention affects the debts of private and natural or juridical persons. In addition, other elements in the convention would have to be redrafted in order to make it consistent; in the first place, the very title of the convention would have to be changed so as not to give the impression that it dealt with all State debts; the definition of State property in article 8 would have to be altered to exclude property, rights and interests due to a State by a private person.

29. The second solution would be to include the debts of a State towards private persons, as proposed in the Brazilian amendment, by including the expression "any other financial obligation chargeable to a State". That had the advantage of being clear and logical. There were many arguments in favour of including the expression: first of all, if article 31 in its current form were maintained, it would be inconsistent with the title of the convention, which referred to all State debts, and with article 8, already adopted by the Committee, which did not make it clear whether the debtors were subjects of international law or not. In that connection, he referred to paragraph (46) of the International Law Commission's commentary to article 31.

30. Moreover, as the representatives of Switzerland and Canada, *inter alia*, had pointed out, the convention had to take account of international reality. As the commentary stated, the volume of private debts owed by States was considerable. If such debts were not covered by the definition, that could have harmful effects upon States, particularly developing ones, which borrowed on the private financial market.

31. The discussions on article 8 had shown that there was a consensus on the fact that States could not give more than they possessed and that, as the Expert Consultant had pointed out, when State property was transferred it had to pass with any charge attached to it. He had also said that those matters should be dealt with under Part IV. It therefore seemed that the time had come to deal with them.

32. There was no sound argument against accepting the Brazilian amendment. The Soviet delegation had said that the draft should be limited to debts between subjects of international law. What then became of the definition of State property in Part II of the convention, which did not exclude property rights and interests owed by private persons who were not subjects of international law? No objections had been raised in that regard. Did the Committee of the Whole intend to revise article 8 in the light of its decision on article 31? In addition, the Swiss representative had very properly asked what treatment would be applicable to contracts between a State and a private person which were governed partly or wholly by international law? It was impossible to say that in general international law a State had no financial obligation in respect of private debts.

33. His delegation therefore associated itself with the Brazilian amendment and the second solution, which it considered to be clearest and most logical and which had been supported by half the members of the International Law Commission. If the debts of private persons towards States were covered by the convention (article 8), the debts of States towards private persons could not be excluded from it. Nonetheless, his delegation did not exclude the first, restrictive solution, as long as it was clearly formulated and the title and article 8 of the convention were changed in consequence.

34. As far as the Syrian amendment was concerned, his delegation thought that the reference to good faith was superfluous. It was not against the reference to international law but was still concerned at the sponsor's explanation that that would reintroduce the notion of "odious debts". That was a difficult matter which should not, in his delegation's view, be dealt with in the convention. The International Law Commission had concurred in that view. His delegation could not therefore support the Syrian amendment.

35. Mr. HAWAS (Egypt) said that his delegation supported the International Law Commission's draft article 31 on the understanding that the words "subject of international law" had the meaning attributed to them by the Expert Consultant.

36. With regard to the Brazilian amendment, he pointed out that the definition in article 31 needed to be seen in the light of the words "for the purposes of the articles in the present Part" which prefaced the article. There had been a balanced argument on the subject and either approach could be defended.

37. He agreed with the first part of the French representative's analysis of article 31 but thought that there were already sufficient safeguards in the convention. Private debts were of course covered by private law, and articles 6 and 34, paragraph 1 offered additional safeguards.

38. The definition in article 31 was consistent with the International Law Commission's general policy, having regard to the special nature of each Part of the convention. Where State property was concerned, the convention provided for succession from a predecessor State to a successor State; archives also passed from a predecessor State to a successor State and, in connection with debts, the draft article spoke of "any other subject of international law". The same logic informed all the three Parts. The formulae differed in each but they were not contradictory.

39. He could not agree with the contention of the representative of France that there was a contradiction between article 8 and article 31, for article 8 spoke strictly of the property of the predecessor State. Just as in the discussion of the articles on archives, the Committee had been quite clear that those articles were not concerned with the archives of a private person or company, so likewise the expression "State property" could not possibly mean the property of a private company or person. Similarly, article 31 was concerned with "State debt" and to construe the definition as covering also private debts would introduce an extraneous element into the convention.

40. His delegation could not agree that the extension of the definition to cover the claims of private creditors would benefit developing countries. Private creditors had sufficient guarantees and ways of claiming their

debts. In the light of those considerations his delegation could not support the Brazilian amendment.

41. With respect to the Syrian amendment, he said that his delegation could accept the addition of a reference to international law but thought that, since good faith was in any case implicit in all agreements, specific mention of it in one article might cause problems. Otherwise his delegation could support the amendment as a whole.

42. Finally, his country welcomed the fact that the liberation movements were recognized as subjects of international law.

43. Mr. KOLOMA (Mozambique) drew attention, in connection with the Brazilian amendment, to the provisions of article 2, paragraph 1(*a*) of the draft convention.

44. According to modern international law, the subjects of international relations were States and international organizations. The object of the convention was to regulate international relations in respect of State property, State archives and State debts in the case of a succession of States. In the context of State debts, that meant that the convention was intended to regulate only financial obligations arising at the international level, in other words between subjects of international law. That point was made clear in paragraph (46) of the International Law Commission's commentary to article 31.

45. The Brazilian amendment would obviously also cover subjects other than subjects of international law, in particular multinational corporations, whose rights were duly protected under article 6 of the draft. That amendment would in effect extend the scope of the draft convention to matters governed by domestic rather than by international law. Accordingly, his delegation could not support the Brazilian amendment.

46. His delegation would be prepared to support the Syrian amendment only if the words "in good faith" were deleted and the words "in conformity with international law" were retained.

47. Mr. MAAS GEESTERANUS (Netherlands) said that a number of speakers had drawn attention to the fact that, among the liabilities of States including predecessor States, the debts owed to other States or subjects of international law represented only a fraction of the total. To deal only with that fraction in developing rules on State succession would make neither legal nor economic sense. His delegation therefore believed that, as a matter of principle, the amendment proposed by Brazil merited support.

48. In that connection, the representative of Egypt had raised a question as to why, in Part IV, the Committee should depart from the general line followed in the Parts dealing with State property and State archives. The articles proposed in Part II did not concern themselves with private property and Part III did not cover private archives. The Netherlands delegation wished to point out that, even if the Brazilian proposal was accepted, Part IV would still not contain rules on private debts. Without the Brazilian amendment, there would be a serious imbalance in the convention. Whereas in Part II, State property was defined as including debt claims against anybody, Part IV would deal only with a surprisingly narrow group of debts. Moreover, article 35, paragraph 2 and article 36, paragraph 1 recognized a link between State debts which passed to the successor State and "the property, rights and interests" which passed to the successor State. In those provisions such a link was clearly independent of the status of the creditor as a subject of international law or otherwise. The question therefore arose why the definition of "State debt" should exclude State debts owed to a creditor who was not a subject of international law. There was no legal or logical reason to make such a distinction between State debts.

49. Referring to the amendment proposed by the Syrian Arab Republic, he said that his delegation could approve of the idea that reference should be made to rules of international law. Such a reference would emphasize the need for a clause to be inserted in the convention relating to the settlement of disputes which might arise on the question whether or not certain obligations had indeed arisen in conformity with international law. The same amendment referred to good faith; as had been pointed out by the representative of Egypt, good faith was presumed to be a guiding principle relating to all articles and ought not to be specified in one only.

50. Mr. LAMAMRA (Algeria) said that the definition proposed in article 31 was clear and unambiguous. It made provision for an expansion of creditor categories to include both international organizations and other subjects of international law. The addition of the latter category had given rise to a request for clarification from the delegation of Pakistan (A/CONF.117/C.1/L.11) and, at the previous meeting, the Expert Consultant had replied in a manner which had satisfied the delegation of Algeria. In the light of that explanation as a whole, his delegation supported the retention of the last category of potential creditor. In that connection, it had been reassured by the harmony of views between the representative of the United Kingdom and the Expert Consultant regarding the exclusion of transnational corporations from the category of other subjects of international law. His delegation considered that the term "any other subject of international law" clearly covered entities such as national liberation movements.

51. His delegation was prepared to support the definition contained in article 31 as it stood. It could not however support subparagraph (*b*) of the Brazilian amendment and would vote against it, if it was put to the vote. In that connection, his delegation and others had noted that the International Law Commission had made specific and adequate provision to safeguard the rights and obligations of natural or juridical persons. There was no case for raising private creditors to the level of beneficiaries of a succession of States in the matter of State debts, even though such natural and juridical persons were protected in the matter of archives. Moreover, paralegal arguments had been used during the discussion, although such arguments had been considered inappropriate in other contexts. In that connection it had been suggested that the absence of protection for private debts in the convention would undermine the confidence of foreign investors; that was an

over-simplification, as the international movement of private capital followed rules which were quite outside the scope of the convention.

52. His delegation was prepared to support the amendment of the Syrian Arab Republic; the inclusion of the concept of good faith in the definition would not mean that good faith should not also apply in connection with the implementation of any international obligation.

53. Mr. MURAKAMI (Japan) said that, in cases where State debts arose from treaties, the transfer of such debts might be covered both by the convention under consideration and by the 1978 Vienna Convention on Succession of States in Respect of Treaties. In such cases, the question of applying the two conventions should be solved in accordance with article 30 and other relevant provisions of the 1969 Vienna Convention on the Law of Treaties.

54. His delegation would also like to place on record its understanding that, in the case of a transfer of any financial obligation owed to international organizations, the constituting instruments and legally binding internal rules of the organizations would prevail over the convention.

55. In the view of his delegation the term "financial obligation" was somewhat vague. It would be necessary to look at the provisions of Part IV as a whole before it would be possible to make a reasonable clarification.

56. The proposal of the Syrian Arab Republic to qualify the term "financial obligation" by adding the words "arising in good faith and in conformity with international law" made the term even more vague and imprecise instead of clarifying it; his delegation would not therefore be able to support the amendment.

57. His delegation shared the concern of the delegation of Pakistan expressed in document A/CONF.117/C.1/L.11, which called for clarification of the phrase "any other subject of international law". In that connection he said that his delegation was not satisfied with the explanation provided by the Expert Consultant.

58. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that the discussion had shown clearly that the International Law Commission had adopted the best approach to the important and complicated issue of defining "State debt". All lawyers were aware that the definition of any concept presented difficulties. That was particularly so where the interests of a number of States were involved and the discussion had shown clearly that substantially differing views existed on the question.

59. The argument used to support the Brazilian amendment was basically that the text of the International Law Commission did not safeguard the debts of private natural or juridical persons. That argument was not valid as it was not possible to solve all problems by means of treaty law.

60. Article 31 defined "State debt" for the purposes of the articles in Part IV of the draft convention. The draft of Part IV had been carefully balanced with the preceding Parts. In particular, in the commentary on article 6, the International Law Commission explained that it had decided not to include in the definition of State debt a reference to any financial obligation chargeable to a State other than those owed to another State, an international organization or any other subject of international law. It had however found it appropriate to insert in the draft the safeguard clause contained in article 6. The International Law Commission had therefore found a well-balanced solution to the problem; it had provided a guarantee for private debt in article 6 and a clear definition of State debt in article 31 which covered all the articles in Part IV.

61. Her delegation fully supported article 31 as it stood. It could not however support the amendment of Brazil for reasons of principle, bearing in mind the discussion which had taken place on that amendment.

62. The amendment of the Syrian Arab Republic was generally acceptable to her delegation; the addition of the words "good faith", although not necessary, was acceptable.

63. Mr. LEITE (Portugal) said that his delegation would support the Brazilian amendment which would resolve a contradiction between article 31 and article 8. The amendment, if adopted, would give coherence and balance to both articles and would avoid difficulties hindering the access of developing countries to private capital. In that connection, he stressed the importance of the safeguard clause contained in article 6.

64. His delegation would not be able to support the amendment of the Syrian Arab Republic, because it might raise the problem of odious debts which the International Law Commission, in its wisdom, had decided not to consider. His delegation had no objection to the introduction of the phrase "in conformity with international law", but considered that the expression "good faith" was superfluous and would give rise to different interpretations.

65. Mr. IRA PLANA (Philippines) said that article 31 was in line with the previous articles of the draft convention. The definition which it contained was limited in scope and referred only to financial obligations; it represented a step in the right direction, particularly for newly independent States. Such States should not be saddled with financial or other obligations which would make them sink into a morass. To burden a newly independent State with obligations would conflict with the responsibility of the international community towards such States. The International Law Commission had borne those considerations in mind in formulating article 31. In the absence of a better text, his delegation was inclined to support article 31 as it stood.

66. Mr. NAHLIK (Poland) expressed his surprise at the French delegation's position, which combined support for the Brazilian proposal for adding a reference to "any other financial obligation chargeable to a State" with opposition to the inclusion of the words "or any other subject of international law". The existence of subjects of international law other than States or international organizations could hardly be denied; in addition to the examples given by the Expert Consultant, many countries in the group to which France belonged recognized certain international entities, such as the Order of the Knights of Malta, the International Committee of the Red Cross or, indeed, the Holy See, as

subjects of international law *sui generis*. The concept of subjects of international law other than States was a fairly recent one but it was still evolving and would perhaps continue to evolve in the future; it seemed rather strange to object to it while at the same time wanting to introduce the concept of debts to private creditors into the text of article 31.

67. He had every sympathy with the Syrian amendment, but feared that the inclusion of the phrase "in good faith" in only one article of the draft convention might give rise to misleading interpretations *a contrario*; it would perhaps be more appropriate to include the phrase in article 3, among the "General provisions" of the draft convention.

68. Commenting more generally on the progress of the Committee's work, he noted with concern that the Drafting Committee had interrupted its work some days earlier; he feared that it would be difficult to make up the delay during the following week, which would consist of only four working days.

69. Mr. TARCICI (Yemen) said that his delegation had been satisfied with the International Law Commission's text all along and continued to support it. It also considered the Syrian amendment to be a constructive contribution which strengthened and clarified the meaning of article 31. However, in view of the apprehensions expressed by a number of previous speakers who, while sympathizing with the Syrian amendment, saw a possible source of misinterpretation in the phrase "in good faith", he wondered whether the representative of the Syrian Arab Republic might agree to delete the reference to good faith. The remainder of the amendment would then stand a good chance of being accepted by a consensus, which his own delegation would be happy to join.

70. Mr. MIKULKA (Czechoslovakia) said that his delegation supported article 31 as it stood. General international law, in the codification of which the Conference was engaged, could not regulate all aspects of a problem as complex as that of the succession of States. It could not possibly deal with all the political, legal, financial and other consequences of territorial changes, which fell either within the scope of internal law, including private international law, or else outside the scope of legal regulations altogether. General international law could not regulate the succession to debts of the predecessor State towards natural or juridical persons who, at the time of the succession, were nationals of the predecessor State or of third States; those debts were not international financial obligations, which alone would be liable to be transmitted under the norms of general international law. For those reasons, the Brazilian amendment was not acceptable to his delegation.

71. With regard to the Syrian amendment, he agreed with the comments made by the Polish representative and recalled that a similar amendment had been rejected as superfluous by the 1977-1978 United Nations Conference on Succession of States in Respect of Treaties.

72. Commenting on the French representative's reference to an imbalance between article 31 and article 8, he recalled that, during the discussion on article 8, the Czechoslovak delegation had expressed doubts concerning the possibility of invoking the internal law of the predecessor State for the purpose of determining what constituted "State property". The reference to internal law in article 8 excluded from the definition of State property the credits given by the predecessor State to another subject of international law under international treaties which, in his delegation's view, were not part of internal law in all national legal systems. That was yet another imbalance in addition to the one already mentioned, since international State credits were a counterpart to State debts as defined in article 31. In order to harmonize the articles, it would be better to revise article 8 than to enlarge the scope of article 31 to include State debts towards private creditors.

73. Mr. CHO (Republic of Korea) said that he sympathized with the intention and purpose of the Brazilian amendment and shared the view that private creditors should be given full protection in international economic transactions. Nevertheless, he was inclined to favour the more limitative text proposed by the International Law Commission, for it defined "State debt" for the purposes of the articles of a specific convention whose purpose, in turn, was to codify the public international law concerned principally with subjects of international law. Moreover, the rights or private creditors were, in his view, sufficiently guaranteed by articles 6 and 34 of the convention.

74. Referring to the Syrian amendment, he expressed the view that the inclusion of the phrase "in conformity with international law" would significantly improve the text by excluding odious debts from the scope of the definition. In his view, non-transferability of odious debts in cases of State succession was a principle of international law which had already been established. His delegation would therefore support the International Law Commission's draft as amended by the Syrian Arab Republic, subject to some reservations concerning the phrase "in good faith".

75. Mr. MARCHAHA (Syrian Arab Republic) reiterated the statement he had made at the 30th meeting when introducing his delegation's amendment to the effect that the purpose of the amendment was to enrich the article and remove any ambiguity it might contain. With all due respect to the arguments advanced by the Expert Consultant, he continued to believe that good faith could be objectively determined and that a reference to it would improve the text of the article. However, he was prepared to bow to the majority view by withdrawing the words "in good faith and", so that the text of his amendment would read:

> "For the purposes of the articles in the present Part, 'State debt' means any financial obligation of a State arising in conformity with international law towards another State, an international organization or any other subject of international law".

76. Mr. PIRIS (France), speaking in exercise of the right of reply, said that he did not accept the charge of inconsistency levelled at his delegation's position by the representative of Poland. There was no contradiction between favouring the inclusion of a reference to private debts and noting that in international law there

was no specific, generally agreed definition of subjects of international law other than a State or an international organization.

77. If the Committee insisted on maintaining the concept of subjects of international law, it should take up the Canadian representative's suggestion that the wording used should be that of article 3 of the 1978 Vienna Convention.

The meeting rose at 1 p.m.

33rd meeting

Thursday, 24 March 1983, at 3.35 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 31 (State debt) (*concluded*)

1. Mr. MUCHUI (Kenya) said that, in his delegation's view, those who urged that the International Law Commission's definition of State debt be extended to cover the case of private creditors appeared to base their case mainly on economic considerations. Those who argued for the retention of the Commission's definition, on the other hand, were guided by legal considerations. After careful analysis of the various arguments, his delegation had concluded that it should support the "legalists".

2. His delegation was fully prepared to endorse the amendment submitted by the Syrian Arab Republic (A/CONF.117/C.1/L.37), as orally revised, which had the virtue of stating explicitly an element that was no doubt implicit in the International Law Commission's text.

3. Mr. THIAM (Senegal) said that his delegation understood the intention of the Brazilian amendment (A/CONF.117/C.1/L.23) to have been to stimulate discussion on one of the most important articles of the draft convention. In that respect it had served a most useful function.

4. Important as it was for the members of the Committee to crystallize their thinking on the subject, the primary consideration was the adoption of a rule of international law which could deal adequately with the realities it was supposed to govern. Given the diverse, indeed contradictory, nature of State practice in respect of the succession of not only private but even public debts, it was extremely difficult to establish clear rules. His delegation believed that, in the circumstances, article 31, as proposed by the International Law Commission, struck the best possible balance between international law and State practice.

5. Several factors should be borne in mind. In the first place, the draft convention contained two safeguard clauses—article 6 and article 34—which were designed to protect private interests that might be involved in State succession. Second, the extension of the definition of State debt to cover "any other financial obligations chargeable to a State" would result in the inclusion of administrative debts, which were clearly not governed by the succession of States, unless by specific agreement between the States concerned. Third, the Brazilian amendment ran counter to the well-established principle of international law that a private person could not invoke international law for the direct protection of his own interests. Fourth, the successor State could in any event assume such interests by virtue of State succession in respect of treaties; thus, a contract concluded between a private person and a State could become subject to international law.

6. His delegation believed that the succession of States could not be construed as resulting in a surrender of sovereignty nor in the establishment of a novation, whereby the successor State would take over the private debts of the predecessor State. International law provided States with various possibilities for organizing their relations with another entity. That could be another reason for considering the text proposed by the International Law Commission as the best possible option.

7. In conclusion, he wondered whether, by adopting the Brazilian amendment, the Committee would not be engaging in the illusion of codification of progressive development of international law.

8. The draft article proposed by the International Law Commission should not be considered hostile to private interests; a State could establish its relations with other entities, whether public or private, on the basis of various types of agreement.

9. Mr. ROSPIGLIOSI (Peru) said that the International Law Commission's text of article 31 was an admirable provision which was difficult to improve upon. Nevertheless, his delegation supported the Brazilian amendment, for the reasons put forward by the representative of France at the previous meeting. Perhaps the most compelling argument was the fact that, if international law was not in line with reality, it ran the risk of being irrelevant, if not even harmful.

10. His delegation believed that more important than the protection of private interests was the need to safeguard the interests of poorer nations and encourage the solution of the urgent and vital problems that confronted them. To restrict their access to sources of capital would not be in their interest.

11. Mr. do NASCIMENTO e SILVA (Brazil) said that, having listened carefully to the debate, he believed it would be preferable to have a vote on the amendment submitted by his delegation.

12. The CHAIRMAN invited the Committee to vote first on the Brazilian amendment to article 31 (A/CONF.117/C.1/L.23) and then on the amendment submitted by the Syrian Arab Republic (A/CONF.117/C.1/L.37), as orally revised.

The Brazilian amendment was rejected by 35 votes to 23, with 5 abstentions.

The amendment submitted by the Syrian Arab Republic, as orally revised, was adopted by 43 votes to none, with 20 abstentions.

13. The CHAIRMAN invited the Committee to vote on draft article 31 as proposed by the International Law Commission, as amended.

Draft article 31, as proposed by the International Law Commission, as amended, was adopted by 40 votes to 17 with 6 abstentions, and referred to the Drafting Committee.

14. Mr. BOSCO (Italy), speaking in explanation of vote, said that his delegation had abstained in the vote on article 31 because it did not contain any provision relating to other financial obligations which might be chargeable to a State, particularly the debts of the predecessor State to foreign individuals. In his view, the absence of such a provision in no way affected existing customary international law on the subject and the important body of practice which had evolved, principally since the First World War. The principle that the successor State assumed responsibility for the debts of the predecessor State was generally recognized by writers and in State practice. The most recent State practice, for example the peace treaties concluded after the First World War, tended to establish as a rule of international law the duty of a successor State to respect the acquired rights of individuals, as was also evident, *inter alia*, from an advisory opinion of the Permanent Court of International Justice.[1] His delegation certainly did not propose to renounce that existing corpus of law.

15. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had voted in favour of the Brazilian amendment and, subsequently, against the International Law Commission's text of article 31, even though, in its view, private creditors were protected by general international law. Article 31 contained a basic imbalance, as had been stated at the 31st meeting. From the legal standpoint, a provision defining State debts should not leave out obligations which, as practice showed, constituted the main bulk of State debts in cases of succession.

16. His delegation's votes did not prejudge the question whether it would ultimately decide to subscribe to a rule which would subject private creditors to the provisions of Part IV of the draft convention. That decision would depend on whether Part IV as a whole was, in his delegation's view, satisfactory with regard to the protection of creditors in general.

17. His delegation had abstained in the vote on the Syrian amendment, less on account of the wording of that amendment than on account of the sponsor's explanation of the meaning to be attributed to it.

18. Mr. ROSENSTOCK (United States of America) said that his delegation had voted in favour of the Brazilian amendment and against the International Law Commission's text of article 31, for the reasons which he had stated at the 32nd meeting.

19. His delegation had abstained in the vote on the Syrian amendment because it was difficult to vote against a phrase such as "in conformity with international law". It had, however, been tempted to vote against the amendment in view of its absurd drafting. It was ridiculous to speak of legal or illegal obligations: obligations were by definition legal or they were not obligations. To insert such a reference in one place but not in others would result in a drafting monstrosity. His delegation had sympathy for some, but not all, of the reasons given for the submission of the amendment but considered that such casual statements could not have the effect of overturning decisions carefully arrived at by the International Law Commission.

20. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation had regretfully been obliged to vote against the International Law Commission's text of article 31, because the Brazilian amendment had been rejected and consequently the definition of the expression "State debts" had thus become unduly restrictive.

21. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation had abstained in the vote on the Brazilian amendment because, in the present state of the development of international law and international economic relations, it was not possible to limit the financial obligations of a State to those relating to subjects of international law. The concept of State debts was much more complex than that, because not only States but also other legal personalities participated in international financial transactions. Consequently, it was impossible to establish a clear distinction between the various types of State debts.

22. On the other hand, although his delegation was not entirely satisfied with the definition of State debts in the draft article proposed by the International Law Commission because that definition was incomplete, it considered that that text contained a number of necessary elements of the definition. It had therefore decided to vote in favour of article 31 as a whole, as amended, as an indication of its readiness to accept the decision of the majority of the participants in the Conference.

23. It had also voted in favour of the Syrian amendment, because the latter was fully consistent with the text drafted by the Commission.

24. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the Brazilian amendment for the reasons it had given in the course of the debate. Unfortunately, there seemed to have been a misunderstanding underlying much of the discussion on that amendment. Some delegations had said that one of the reasons why the draft convention should not cover debts owed to creditors which were alien individuals or corporations was because international law could not govern the legal relationship between such cred-

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[1] *P.C.I.J., Series B, Advisory Opinion No. 6*, pp. 35-37.

itors and a State. That would not have been the effect of the Brazilian amendment. If that proposal had been accepted, the provisions of the draft convention would still have been limited to governing the effects of a succession of States on debts owed by States, although to a wider range of them. If, for example, a private bank lent money to a State, the legal relationship between the bank and the State would be governed, subject to the terms of the contract between them, by the internal law of the State concerned. The effect of the Brazilian amendment would have been to ensure that, when a succession of States affected the kind of private loans he had mentioned, the provisions of the convention would have governed the succession and the resulting inter-State relationship.

25. His delegation had abstained in the vote on the Syrian amendments, as orally revised. Had the reference to good faith not been removed from that text his delegation would have been obliged to vote against it. The inclusion in article 31 of the reference to international law was unnecessary, however. If it were inserted in that article, it should be inserted in various other articles also, if consistency was to be maintained. His delegation had found disturbing the statement made by the Syrian representative in explanation of the reasons for that amendment.

26. Since the Brazilian amendment had not been adopted, his delegation had found it necessary to vote against the text of article 31 produced by the International Law Commission, because it did not cover the necessary ground.

27. Ms. LUHULIMA (Indonesia) said that she had voted against the Brazilian amendment because the proposed subparagraph *(b)* was outside the scope of the draft convention. Her delegation was grateful to the Syrian delegation for having deleted the reference to good faith in its amendment. It had thus been able to support that amendment, which improved the International Law Commission's text.

28. Mr. RASUL (Pakistan) said that his delegation had abstained in the votes on the Brazilian and Syrian amendments because, in its view, even with the deletion of the reference to good faith, those amendments would have tended to create problems. His delegation would have voted in favour of the draft article proposed by the International Law Commission, especially in the light of the explanations given by the Expert Consultant, but had had to abstain because of the adoption of the Syrian amendment.

29. Mr. MURAKAMI (Japan) said that his delegation had been unable to vote in favour of article 31 because it considered it premature to do so before it had a clear picture of the other provisions of Part IV.

30. Mr. ECONOMIDES (Greece) said that he had voted in favour of the Brazilian amendment because it constituted an indispensable element of the draft article. He had also voted in favour of the Syrian amendment, but understood the phrase "in conformity with international law" purely in the sense required under international law.

31. He had abstained in the vote on article 31, as amended, because that definition did not cover private debts and also because article 31 should be read in close correlation with the other articles of Part IV. His delegation preferred not to adopt a definitive position until all those articles had been considered.

32. Mr. MONNIER (Switzerland) said that he had voted in favour of the Brazilian amendment. The rejection of that amendment had made it difficult for him to support draft article 31 as proposed by the International Law Commission, because of its ambiguous reference to creditors of State debts, especially the phrase "any other subject of international law". The draft article did not take into account the realities of international financial and economic relations. He agreed with other delegations which had argued that the definition of State debts proposed for the articles in Part IV could have no effect on the protection of acquired rights assured by general international law.

33. Mr. PIRIS (France) said that his delegation had voted in favour of the Brazilian amendment and, after that proposal had been rejected, had voted against the amended article 31 for the reasons he had given at the 32nd meeting. In that connection, he endorsed the views expressed by the representatives of Italy, the United Kingdom and Switzerland. The provision adopted obviously could have no effect on the protection of acquired rights of creditors assured by general international law.

34. His delegation had abstained in the vote on the Syrian amendment because it considered a reference to international law unnecessary in the context of article 31. In any case, such a reference had been rejected in other articles where it would have been much more useful. Moreover, his delegation was unable to associate itself with the explanation of the Syrian amendment which had been given by the Syrian representative.

35. Mr. BEN SOLTANE (Tunisia) said that his delegation had voted against the Brazilian amendment because that proposal was outside the scope of the draft convention. It had voted in favour of the Syrian amendment because of the deletion from it of the reference to good faith and also because the addition it proposed improved the International Law Commission's text. His delegation had finally voted in favour of the latter text, as amended.

36. Mr. NATHAN (Israel) said that his delegation had voted in favour of the Brazilian amendment and, when that had been rejected, had voted against the draft article proposed by the International Law Commission. It considered that the limitation of State debts and financial obligations under that text to obligations arising under international law proper was self-defeating. In that context, his delegation reiterated its position that "financial obligations" included financial obligations arising *ex delicto* and *quasi ex delicto*, such as crimes against humanity, or violations of fundamental human rights and of the rules of international law by the predecessor State with regard to its own nationals, which might well give rise to obligations under international law which became of the greatest relevance in the relations of the successor State with other States. It would be inconceivable that such obligations should not be covered in a convention such as the one under consideration.

37. His delegation had abstained in the vote on the Syrian amendment because it considered it unnecessary. However, its abstention did not in any way imply agreement with the views put forward by the Syrian representative in support of his delegation's amendment.

38. Mr. MIKULKA (Czechoslovakia) said that his delegation had voted in favour of article 13 as proposed by the International Law Commission, as amended, and against the Brazilian amendment. In its view, the regulation of the effects of succession of States on State debts towards private creditors did not form part of general international law which the Conference was codifying, but was rather part of internal law, including private international law, or the subject of specific international agreements.

39. Mr. BROWN (Australia) said that his delegation had voted in favour of the Brazilian amendment, mainly for the reasons given in paragraph (46) of the International Law Commission's commentary on the article. In view of the rejection of that amendment, the text of the draft article, as amended by the Syrian proposal, on which his delegation had abstained, had become unacceptable to his delegation, which had voted against it.

40. Since a whole range of other financial obligations chargeable to a State were excluded from the definition of "State debts", the title of Part IV of the draft convention should be changed to read "Certain State debts". That matter should be referred to the Drafting Committee.

41. Mr. LAMAMRA (Algeria) said that his delegation had voted against the Brazilian amendment for the reason it had given at the preceding meeting. It had voted in favour of the Syrian amendment because it endorsed the explanation given by the Syrian representative concerning its scope, including the exclusion of odious debts from the concept of State debts.

42. Mr. SKIBSTED (Denmark) said that his delegation had voted against the text proposed by the International Law Commission because of the Committee's rejection of the Brazilian amendment. It would have voted against the Syrian amendment, but the deletion from it of the reference to good faith had made it possible for it simply to abstain.

43. Mr. RASUL (Pakistan) drew the Committee's attention to a drafting matter, namely, the absence of any reference in article 31 to the predecessor State, which had been mentioned in earlier articles. He would like to know what the intention of the Conference was in that respect.

New article 24 bis (Preservation and safety of State archives)

44. The CHAIRMAN drew attention to the new article 24 *bis* submitted by the representative of the United Arab Emirates (A/CONF.117/C.1/L.50).

45. Mr. A. BIN DAAR (United Arab Emirates), introducing the draft new article 24 *bis*, referred to the statement he had made at the Committee's 28th meeting during the discussion of article 26, concerning the safety of State archives belonging to the territory to which the succession of States related. The importance of that question had prompted his delegation to propose the insertion in the draft convention of a new draft article 24 *bis*. Deliberate damage or destruction of State archives by the predecessor State relating to its activities connected with the successor State could not be regarded as politically moral or legally justified. The predecessor State had a moral obligation to return either the original or at least reproductions of official, historical, cultural or other documents or materials of importance pertaining to the territory to which the succession of States related.

46. Paragraph 4 of article 26 provided for co-operation by the predecessor State in efforts to recover any archives dispersed during the period of dependence for the purpose of their passing to the successor State. The principle of good faith implicit in that paragraph was expected to prevail, as in the case of the other articles of the proposed convention. However, experience had shown that there was always the possibility of deviation from the principle of good faith. Such deviations could recur under cover of legality through interpretations of the existing text. His delegation therefore saw a need for a clearly worded safeguard clause, not only to preserve the integrity of State archives but also to ensure that such archives were never under any circumstances deliberately damaged or destroyed. His delegation had proposed the new provision in article 24 *bis* in order to ensure that it would be applicable to all the appropriate categories of State succession in respect of the passing of State archives to the successor State.

47. Mr. ROSENSTOCK (United States of America) said that, while his delegation was not opposed to the principle underlying the new draft article, it did not think that such a provision should be included in a convention on the succession of States. Such a rule, if introduced, should apply also to State property. He did not consider that the new article improved the text and would therefore vote against the amendment.

48. Mr. MONNIER (Switzerland) said that the proposal before the Committee appeared simple and easy to adopt. However, for his delegation, it gave rise to problems of an exclusively juridical nature. The United States representative had already asked why the provision should be limited in its scope to State archives and not cover State property also. The proposal appeared legally dangerous because it assumed illicit behaviour on the part of the States concerned. Its assumptions were contrary to the provisions of international law which had been mentioned during the discussion of other articles and raised questions concerning such matters as good faith, abuse of right and the behaviour of States before the law. It would therefore be difficult for his delegation to support the amendment, however praiseworthy its purpose.

49. Mr. EDWARDS (United Kingdom) said that, in the case of any agreement, a certain level of good faith had to be assumed, but the amendment submitted by the United Arab Emirates assumed none. In his view a provision such as that proposed would fit uneasily into the draft convention under consideration. His delegation had no objection as far as the principle was concerned but it could not support that particular amendment.

50. Mr. OESTERHELT (Federal Republic of Germany) said that, generally speaking, a safeguard clause

should concern itself with the legal consequences which might be drawn from a text open to misinterpretation. His delegation saw nothing in the draft convention which could be construed as "permitting" deliberate damaging or destroying of any State archives. It was therefore unable to support the inclusion of such a clause in a convention on succession of States.

51. Mr. RASUL (Pakistan) inquired whether the International Law Commission had considered the subject of the proposed new article.

52. Mr. BEDJAOUI (Expert Consultant) said that, as far as he could recollect, the International Law Commission had never directly discussed the matter. The text of the proposal nowhere made reference to either the predecessor or the successor State, and the formulation, as he saw it, could apply equally to both. If the Committee of the Whole adopted such a provision, it would presumably be with the intention of promoting the preservation of archives, which could, in a certain sense, be described as the heritage of all mankind. Furthermore, the act of damaging or destroying need not be that of any State; it might be committed by some group or organization, even from a third State. In that case what would be involved would be the international responsibility of the State concerned for the illicit acts which had taken place.

53. He believed that the idea underlying the proposal had stemmed from the Committee's consideration of the question of the integrity and unity of archives. The text could be read in two complementary ways. Damage might imply physical destruction, for example by burning, but it might also mean dispersal of a collection of archives in a way which nullified their administrative or cultural value. He noted that the Committee had not considered such a provision in respect of State property.

54. Mr. PIRIS (France) said that his initial reaction to the idea behind the proposal submitted by the United Arab Emirates had been favourable but, on further reflection, he had found that he could not support it. The provision seemed useless, for none of the articles concerning State archives could be interpreted as allowing such archives to be damaged or destroyed. Clearly the archivist's work was to classify and sort documents, but also to destroy them. It was hard to make regulations for an activity commanded only by the internal law of the State where it was carried out. His delegation could not agree to the concept of "common heritage of mankind" mentioned by the Expert Consultant.

55. Mr. HAWAS (Egypt) said that his delegation fully supported the proposed new article. He would have thought that such a clear and relevant text might be adopted without a vote. It was in line with articles 3, 24 and others and also with established international law. The intention of the proposal—to preserve the historic and national value of archives for the successor State—was prompted by recent history. Questions which should perhaps be considered were whether it was necessary to state explicitly what was obvious and whether there should be a similar provision in respect of State property. If the proposal of the United Arab Emirates was put to the vote, his delegation would vote in favour of it.

56. Mr. JOMARD (Iraq) also supported the idea underlying the proposal under discussion, which combined two important elements: preservation of the historical heritage generally, regardless of its value, and preservation of the right of the successor State. However, the drafting of the first part of the text was cumbersome and ambiguous and that had perhaps prompted the representatives of France and the Federal Republic of Germany to withhold their support. He also had a criticism regarding the substance. The second part of the text was too restrictive. The provision should be made more general by substituting for the words "pass to the successor State" the phrase "relate to the successor State". That would force the predecessor State to preserve the archives in a proper manner prior to the succession of States and not only at the date of succession.

57. Mr. ECONOMIDES (Greece) said that there appeared to be general agreement on the idea underlying the proposal but the latter's drafting raised more questions than it solved. The crucial point was the date of succession. If the proposal referred to a period prior to that date, it ran counter to State sovereignty. Every State had the right to destroy some of its archives. If the proposal covered the period after the date of succession, when the archives concerned belonged to the successor State, it did not go far enough. The matter would then fall under the heading of State responsibility.

58. Mr. AL-MUBARAKI (Kuwait) said he believed that the proposed new article would protect the interests of successor States and their cultural heritage. His delegation would therefore support it. However, the text should be amended along the lines suggested by the representative of Iraq.

59. Mr. MUCHUI (Kenya) said that he was sympathetic to the intention of the proposal but he had some difficulty with its drafting. He agreed with the Greek representative's analysis of the legal position in the period preceding the succession of States. On the other hand, if the amendment referred to the period after succession, it would not serve any useful purpose, since the archives would have already passed to the successor State.

60. He imagined that the intention of the proposal was to preserve such archives just before the date of succession, when destruction or damage was most likely to take place. If that assumption was correct, some drafting changes would be required. The concluding phrase should read "should pass to the successor State". It was also important to make clear who should not destroy the State archives which, according to the compromise definition proposed for article 19, belonged to the predecessor State. He therefore suggested that the phrase "by the predecessor State" should be added in the second line of the amendment after the phrase "deliberately damaging or destroying".

61. Mrs. TYCHUS-LAWSON (Nigeria) said that, while none of the previous speakers had opposed the principles underlying the proposal of the United Arab Emirates, some of them had expressed doubt as to the desirability of including the proposed new article in the draft convention. Some delegations had suggested that

such a provision should be inserted in Part III rather than in Part II. The Nigerian delegation saw no harm in stating explicitly what was implicit in the draft. While therefore it supported the proposed new article, it wondered whether a similar provision might not be included in Part III. The principles underlying the proposal were important; damaging or destruction of archives had occurred in the past and the possibility of their recurring in the future could not be ruled out.

62. Mr. LAMAMRA (Algeria) said that his delegation fully supported the motives underlying the proposed new article 24 *bis*. The difficulties encountered by some delegations appeared to concern the wording rather than the underlying idea, and a number of suggestions had been made which had indicated that, if that idea was expressed more clearly, the draft article might be accepted without a vote.

63. He wondered therefore whether the delegation of the United Arab Emirates could perhaps reword its proposal. The text which that delegation had submitted was useful and it would be regrettable if it were rejected merely on drafting grounds. His delegation was prepared to support the text as it stood if the United Arab Emirates insisted on a vote at the current meeting, but he stressed that it was in the interest of all delegations to have it reworded.

64. Mr. SUCHARIPA (Austria) said that his delegation strongly supported the general idea underlying the proposed new article but, for purely legal reasons already explained by the Swiss and Greek delegations, his delegation could not support it in its present form. It agreed with the Algerian delegation that the idea merited redrafting in order to secure general acceptance by the Conference.

65. Mr. A. BIN DAAR (United Arab Emirates) thanked the Expert Consultant for his comments and also those delegations which had made suggestions aimed at improving the text of the draft new article. As there appeared to be an acceptance in principle of the idea contained in his delegation's proposal, he suggested that a decision on it should be postponed to allow his delegation time to improve the wording and satisfy those delegations which had expressed reservations.

66. The CHAIRMAN proposed that, in the circumstances, no decision should be taken on the proposed new article 24 *bis* until the Committee had before it a new version of that text.

It was so decided.

67. Mr. BEDJAOUI (Expert Consultant), replying to a question concerning works of art which had been raised by the Nigerian delegation, said that that question was dealt with in some of its aspects and in certain situations by the draft convention, but by its very nature the latter could not settle all problems involving works of art since its purpose was to solve the problems of the succession of States. If, however, a problem concerning works of art were to arise, then the draft convention would have to be interpreted from that standpoint.

68. Furthermore, the application of the convention was restricted to works of art belonging to the State. Within the limits of the scope of the draft convention, therefore, works of art were covered either by the provisions relating to State property or by the provisions relating to State archives. A picture, for example, was an item of property which could belong to a State and, in a case of succession, it would be covered by the provisions of the convention. An old manuscript on the history of a given country, for example, was both an archival item and a work of art and would fall within the scope of the provisions in respect of State archives or State property. The draft convention did not therefore cover all works of art or cultural items and, outside the phenomenon of succession of States, there were situations in which works of art had to be protected or restored to their country of origin. Legally such questions were very delicate and concerned the international private market dealing with works of art. That was really the province of the United Nations Educational, Scientific and Cultural Organization (UNESCO). That organization had appointed an intergovernmental committee to work on the subject and its Director-General had made a statement concerning the return of cultural items to their country of origin. UNESCO was also trying to find means of facilitating bilateral negotiations in that connection.

69. The Nigerian delegation had clearly felt that, after the draft convention had dealt with the question of State property *in abstracto*, it might have dealt with the question of works of art and cultural items in a more concrete fashion, as it had dealt with the question of archives. The Commission, however, had felt that such considerations were outside the scope of the draft convention and might involve technical aspects beyond its competence. It had therefore considered only certain problems relating to works of art. The draft convention did contain some provisions concerning the restitution of certain items relating to a country's cultural heritage, particularly in articles 14 and 26. Such provisions made it possible for items which had belonged to a territory before its loss of independence to be recovered by the newly independent State, thus enabling the latter to recover at least part of its cultural heritage. The draft convention also provided for co-operation between the predecessor and successor States in the recovery of certain items of works of art.

70. Mr. BOSCO (Italy) said that his delegation wished to confirm a comment made by the Italian Government in the International Law Commission's report on its thirty-third session,[2] namely, that a distinction had to be made between problems concerning archives in the traditional sense of the word and those concerning works of art. Paragraph (6) of the International Law Commission's commentary on article 19 of the draft convention also referred to that distinction, which his delegation intended to ensure was properly recognized.

71. Mr. OWOEYE (Nigeria) thanked the Expert Consultant for the reply to his delegation's question. His delegation agreed with the Expert Consultant's explanation, but hoped that the Conference would see fit to make special provision for works of art.

The meeting rose at 5.55 p.m.

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[2] See *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10* (A/36/10 and Corr.1), annex I, p. 411.

34th meeting

Friday, 25 March 1983, at 10.25 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 *(continued)* (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 32 (Effects of the passing of State debts)

New article 31 bis (Passing of State debts)

1. The CHAIRMAN invited the Committee to consider article 32 and the amendment thereto submitted by the Netherlands (A/CONF.117/C.1/L.48) and, at the same time, the United States amendment involving the addition of a new article 31 *bis* (A/CONF.117/C.1/L.47). Remarking that the issues involved had already been discussed at length, he appealed for brevity.

2. Mr. ROSENSTOCK (United States of America), introducing his delegation's amendment involving the addition of a new article 31 *bis*, said that the problem to which that amendment and his delegation's other proposal for the addition of a new article 19 *bis* (A/CONF.117/C.1/L.42) were addressed stemmed partly from the fact that the International Law Commission's text was only half rationalized. Some points common to Parts II, III and IV were treated together in Part I while others were not and there was no self-evident logic to the pattern. He hoped that the Drafting Committee would in due course rationalize all the articles common to the three Parts, thus simplifying the text and making clear both the similarities and the differences between the Parts. Until such rationalization was accomplished, his delegation felt it its duty, in the absence of express reasons to the contrary, to seek identity of approach as between Parts II, III and IV, since failure to do so would entail a risk of confusion and misunderstanding.

3. The point of the amendment was to make clear that the act of passage from the predecessor State to the successor State neither increased nor decreased that which passed. That fact might have more immediate obvious importance in some Parts, such as Part II, than in others, but its fundamental validity with regard to all Parts should be beyond dispute. The point was, in sum, fundamentally a drafting one, and if the Drafting Committee had not been paralyzed by the obduracy of one member, the matter could have been referred to it. Indeed, if the Chairman were to recommend that the matter should be submitted to the Drafting Committee and if no State objected, his delegation would see no need to press its proposals to the vote. Failing such a decision, it saw no alternative but to request a vote on the amendments.

4. Mr. MAAS GEESTERANUS (Netherlands), introducing his delegation's amendment to article 32, pointed out that, unlike the United States amendment, it had not yet formed the subject of any discussion in the Committee. In the particular context of Part IV, dealing as it did with a special triangular relationship, the wording of article 32, which followed the lines of that adopted earlier for articles 9 and 20, seemed to imply that the fact of State succession had legal consequences in respect of, on the one hand, the relationship of the predecessor State with a third State and, on the other hand, the relationship of the successor State with a third State. Article 34, paragraph 1, however, seemed to deny such legal consequences, at least with regard to creditors, for it stated that their rights and obligations were not affected by the State succession as such. In other words, creditors—whether third States, other subjects of international law or private individuals—remained creditors of the predecessor State, and the State succession as such did not create any obligation on the part of the successor State towards them. The latter rule was subject to an important exception in paragraph 2 of article 34, to which his delegation would return in due course. The two rules laid down in articles 32 and 34, respectively, appeared to be mutually contradictory. In order to avoid any misunderstanding as to how those rules would operate and to forestall difficulties with creditors that might otherwise arise, his delegation was simply proposing the inclusion of a cross-reference to article 34 at the beginning of article 32.

5. Mr. MARCHAHA (Syrian Arab Republic) said that there was no practical justification for the United States proposal for a new article 19 *bis* since, in practice, archives were usually photocopied. He opposed the United States proposal for a new article 31 *bis*, which was in direct contradiction with the provisions of article 36 on newly independent States.

6. Referring to the Netherlands amendment to article 32, he said that the proposed addition would be inconsistent with the phrase "in accordance with the provisions of the articles in the present Part" at the end of the article. There was no legal foundation whatsoever for making a specific reference to article 34 rather than to any other article in Part IV.

7. The CHAIRMAN reminded the Committee that he had not yet invited discussion on the proposed new article 19 *bis*.

8. Mr. NATHAN (Israel) said that article 32 as drafted gave rise to considerable legal difficulties. By employing identical terms in articles 9, 20 and 32, the International Law Commission gave identical treatment to legal situations which, in fact, were quite distinct. Parts II and III were concerned with bilateral relations between the predecessor State and the successor State, whereas Part IV, as the Netherlands representative had pointed out, dealt with the tripartite relationship of the predecessor State, the successor State and a creditor State as third party.

9. Paragraph (5) of the commentary to article 34 spelt out clearly the basic proposition underlying that arti-

cle—that the predecessor State retained its debtor status and full responsibility for the old debt. In three of the five specific categories of succession of States envisaged in Part IV—that of transfer of part of the territory of a State, that of newly independent States and that of separation of part or parts of the territory of a State—the personality of the predecessor State remained intact; so did the creditor-debtor relationship between that State and the third-party creditor State and the original liability of the former to the latter.

10. There would therefore be no necessary or crucial connection between the passing of the debt and its extinction, nor would the passing necessarily entail extinction. Indeed, as he had already stated, there would be no such extinction in three out of five cases. Hence, use of the terms "extinction" and "arising" might be inappropriate and even run counter to the obvious intention of article 34, as was also borne out by the commentary to that article. A possible solution might be to delete article 32 altogether but, in the circumstances, his delegation would support the Netherlands amendment, which would bring article 32 into line with article 34.

11. So far as the United States amendment to introduce a new article 31 *bis* was concerned, he suggested that it should be referred to the Drafting Committee.

12. Mr. EDWARDS (United Kingdom) formally moved that the proposed new article 31 *bis* and, in due course, the proposed new article 19 *bis*, should be referred to the Drafting Committee under rule 47, paragraph 2 of the rules of procedure for advice as to whether those new articles should be incorporated in the draft convention.

13. Mrs. BOKOR-SZEGÖ (Hungary) formally opposed that proposal. The United States amendment touched on substance and the Drafting Committee, a body with restricted membership, was not competent to offer advice on it. As she had pointed out in connection with new article 8 *bis* (19th meeting), which her delegation had not supported, the International Law Commission's intention in drafting articles 9, 20 and 32 had not been to emphasize, as a principal rule, the passing of State property, archives and debts but, rather, to define the consequences of such passing in those cases where it took place in accordance with the provisions of the convention. Those provisions differed according to the specific category of succession of States involved; in particular, those governing State debts in the case of newly independent States were exempt from the principal rule. Admittedly, the United States amendment included the phrase "in accordance with the provisions of the articles in the present Part"; nevertheless, by emphasizing as the principal rule the passing of State debts, it was at variance not only with the International Law Commission's intentions but also with the interests of newly independent States. For those reasons, her delegation was unable to accept the amendment and categorically opposed the proposal that it should be referred to the Drafting Committee.

14. Mr. MORSHED (Bangladesh) said that he entirely agreed with the view expressed by the Hungarian representative and shared her difficulty in accepting the proposal made by the representative of the United Kingdom. As had been stated many times, each Part of the draft convention had its own specific character and should be interpreted in its own context. In his view, articles 19 *bis* and 31 *bis* should be considered separately and put to the vote if necessary.

15. Mr. ROSENSTOCK (United States of America) said that there appeared to be a profound misunderstanding as regards the object and purpose of articles 9, 20 and 32. Those articles merely indicated the effects of the act of passing of State property, archives and debts and had nothing to do with what precisely it was that passed. His delegation's amendments were intended merely to clarify the wording of the International Law Commission's draft of articles 20 and 32 which was somewhat opaque, particularly in the English version. There was no conceivable way in which those amendments could be understood as conflicting with any other article of the draft convention in the manner the Hungarian representative had suggested.

16. The CHAIRMAN noted that the proposal made by the United Kingdom representative did not enjoy the support of the Committee as a whole.

17. Mr. EDWARDS (United Kingdom) withdrew his proposal.

18. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation supported the amendment proposed by the delegation of the Netherlands.

19. A reading of the text of article 32 as it stood, in isolation and detached from other provisions of the same Part, led unavoidably to the conclusion that the effect of the article was to extinguish the obligations of the predecessor State without any further exception. He pointed out, however, that the "extinction" of that State's obligations would by juridical necessity imply also the "extinction" of the rights of the creditor State, since the latter were the obverse of the same coin; debts were debt-claims when viewed from the other side of the relationship between debtor and creditor. So as not to be misleading, therefore, it was necessary to guide the reader of article 32 to the provision of article 34, which embodied the basic rule that a succession of States did not as such affect the rights of creditors, and without which the importance of article 32 could not be fully appreciated. No material change was needed, since the material provisions were already present in the draft. A cross-reference to article 34, however, was necessary and would be helpful in avoiding any possible misunderstandings.

20. Mr. PHAM GIANG (Viet Nam) said that his delegation unreservedly supported the text of article 32 as it stood.

21. Referring to the amendment proposed by the United States, he said that, while it was necessary to ensure the internal consistency of the convention as a whole, it was inadvisable to pursue formal consistency at the cost of failing to recognize the unity of each Part of the draft. The proposed new article 31 *bis* would establish a general rule for the passing of State debts in Part IV. That rule, however, patently contradicted article 36, which dealt with the passing of debts in cases where the successor State was a newly independent State. In that respect his delegation concurred with the statement made by the representative of the Syrian

Arab Republic. A careful comparison of the proposed article 31 *bis* with paragraph 1 of article 36 showed that an awkward legal situation would arise if the former were incorporated in the draft, in that two contradictory rules on the passing of State debts would be established in Part IV. His delegation therefore felt that, from the points of view of both form and substance, the new article was unacceptable and would prove particularly disadvantageous or even dangerous for newly independent States which, as was acknowledged in the commentary, were in a precarious economic and financial situation.

22. Mr. BEDJAOUI (Expert Consultant) said that there seemed to be general agreement that parallels should be drawn between articles 9, 20 and 30, which were similar in construction and dealt with the effects of the passing of State property, State archives and State debts, respectively. He stressed that those articles, like article 32, did not themselves organize the passing in those cases: they merely described the legal consequences which would ensue if such passing occurred. If debts passed pursuant to the articles in Part IV, a legal situation arose which involved the extinction and arising of obligations, just as rights were extinguished and arose under articles 9 and 20.

23. In connection with the proposed article 31 *bis*, he said that he wondered whether it would be justifiable to establish a general rule for the passing of State debts when there was at least one case in which such debts did not in fact pass. In view of the possibility of serious misunderstandings, he thought that the Committee might consider dispensing both with article 32 and with the proposed new article 31 *bis*, the two provisions being inseparable. Such action would however raise the issue whether articles 9 and 20 could be retained.

24. Mr. ROSENSTOCK (United States of America) asked whether the Expert Consultant took the view that article 31 *bis* would introduce any substantive change. In his delegation's view, articles 8 *bis*, 9, 19 *bis*, 20, 31 *bis* and 32 were all perhaps not absolutely essential in that they could be eliminated without rendering any Part of the draft inoperable. He wondered whether, on the assumption that article 32 was retained, there was any element in his delegation's proposed article 31 *bis* that would disturb the pattern established by article 32.

25. Mr. BEDJAOUI (Expert Consultant) said that there was a technical problem involved in establishing a general norm declaring the passing of State debts when there was at least one case in which that norm did not apply. The proposed paragraph 31 *bis* certainly implied a change of direction but it was for the Committee to decide whether it also involved a change in substance.

26. Mr. ECONOMIDES (Greece) said that articles 8 *bis*, 19 *bis* and 31 *bis* were all concerned with the principles involved in passing. The Committee had adopted article 8 *bis* and he did not understand how it was logically possible for any delegation which had found the principle enunciated in that article acceptable to oppose its extension to State archives in new article 19 *bis*, and to State debts in new article 31 *bis*. Some delegations had maintained that, whereas the rules regarding the passage of State property were very general, those rules were less clear in the case of archives and sometimes inapplicable in the case of State debts. In his delegation's view, however, the rules were very flexible and he could not understand why the new articles 19 *bis* and 31 *bis* had met with opposition. In fact, the two new articles were just as necessary as articles 20 and 32.

27. The Expert Consultant had suggested that both new article 31 *bis* and article 32 might be dispensed with. Such a radical solution would, in his delegation's view, cause an imbalance of the draft: there would be provision for the effects of passing in Parts II and III, but not in Part IV. The solution would entail removal of all the articles relating to the effects of passing.

28. Other less radical solutions remained which might be acceptable. If the article 31 *bis* proposed by the United States should not be adopted, his delegation would submit a compromise text aimed at meeting the concerns of delegations which felt that the rule on passing approved in Part II (State property) was ill-suited to the Parts dealing with State debts and State archives. The text of article 31 *bis* to be proposed by his delegation would read:

> "The provisions of article 8 *bis* concerning the passing of State property apply *mutatis mutandis* to State debts to the extent that such debts pass from the predecessor State to the successor State in accordance with the provisions of the present Part."[1]

29. His delegation would also propose an analogous text for a new article 19 *bis*.[2]

30. Mr. BEDJAOUI (Expert Consultant) said that it had been argued that there might be an imbalance in the convention if articles 32 and 31 *bis* were dropped. He stressed however that parallelism should not become a fetish. The situation with regard to State property and State archives was quite different from the situation with respect to State debts: a third State was not involved in the first two cases, whereas, in the case of a succession of States that affected debts, the position of a third creditor State had to be taken into account. If the Committee decided that there must be a correspondence between all three Parts, it would have to find a counterpart to article 34. In fact the subjects of State property, archives and debts were completely independent. He doubted whether there was really an imbalance between the three Parts of the draft convention.

The meeting was suspended at 11.40 a.m. and resumed at 12.25 p.m.

31. The CHAIRMAN announced that the Committee would consider the two amendments by Greece when they became available in written form. He added that the representative of Kenya wished to introduce an amendment before the Committee adjourned.

32. Mr. MUCHUI (Kenya) said that there was clearly some contradiction between article 32 and article 36. Since some delegations wished to maintain article 32, he proposed that it should be amended by deleting the words "A succession of States entails" at the beginning of the article and replacing them by "The passing of State debts entails".[3]

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[1] Subsequently issued under the symbol A/CONF.117/C.1/L.53.

[2] Subsequently issued under the symbol A/CONF.117/C.1/L.54.

[3] Subsequently issued under the symbol A/CONF.117/C.1/L.55.

33. He explained the reasons behind the amendment. Article 9, on the effects of the passing of State property, and article 20, on the effects of the passing of State archives, were drafted in terms similar to those of article 32. He pointed out however that State property passed to the successor State irrespective of the type of succession involved, either by agreement or by virtue of the rules in the articles of the convention. The same was true of archives. The situation with respect to debts was different. Under article 36 a debt did not pass from the predecessor State to the successor (newly independent) State unless there was an agreement between the two. The rule in fact was that State debts would not pass to a newly independent successor State. It might be better therefore to be more specific in article 32, which as drafted did not really deal with what happened on succession of States but with what happened on the passage of debts from the predecessor State to the successor State. In fact the title of the article was "Effects of the passing of State debts".

34. The proposed amendment would entail no change of substance but would merely make the article clearer. It was offered by his delegation in an attempt to solve the problems before the Conference.

35. Mr. KOLOMA (Mozambique) said that, since a dogmatic desire for parallelism between the three Parts of the convention was slowing down the work of the Conference, he wished to propose, in accordance with rule 31 of the rules of procedure, that the Conference should reconsider article 8 *bis* for, if that article were withdrawn, the problem of matching articles 19 *bis* and 31 *bis* could be solved by the withdrawal of those articles as well.

36. After a procedural discussion in which Mr. ROSENSTOCK (United States of America), Mr. MONNIER (Switzerland), Mr. LAMAMRA (Algeria), Mr. MAAS GEESTERANUS (Netherlands), Mr. TEPAVITCHAROV (Bulgaria) and Mr. NATHAN (Israel) took part, the CHAIRMAN suggested that the Committee should defer further consideration of the proposed new article 31 *bis* and of article 32 pending circulation in written form of the amendments proposed by the delegations of Greece and Kenya, to enable delegations to study those amendments together with the proposal made by the representative of Mozambique.

It was so decided.

37. The CHAIRMAN said that it had become necessary for the representative of Bangladesh to leave the Conference. He had asked for the floor to state his delegation's position on a number of articles yet to be considered.

38. Mr. HOSSAIN (Bangladesh) said that extraordinary circumstances obliged him to leave the Conference immediately. He apologized to the Committee on behalf of his delegation and thanked the Chairman for giving him the opportunity to place on record a few comments which his delegation wished to make in connection with articles to be considered subsequently.

39. Articles 35 and 38 as drafted by the International Law Commission were well balanced and were acceptable to his delegation. The amendments to those articles proposed by Pakistan (A/CONF.117/C.1/L.13 and L.14) appeared upon preliminary study to be unacceptable, and his delegation hoped that the delegation of Pakistan would reconsider them during the Committee's deliberations.

40. The draft articles as they stood did not provide for any machinery for the settlement of disputes between the predecessor State and the successor State. His delegation believed strongly that a separate article should make provision for the peaceful settlement of such disputes, as was normal in codifying conventions. It was worth noting in that regard that the 1978 Vienna Convention on Succession of States in Respect of Treaties devoted a whole Part to the question of the settlement of disputes.

41. The lack of any machinery for the settlement of disputes might ultimately defeat the main purpose of the future convention, in a situation where a successor State owed its existence to a liberation struggle, to the right of self-determination or to the right of succession. Even when a transfer of sovereignty had taken place, differences of opinion between the predecessor State and the successor State might make the issues relating to succession very difficult to resolve between them. In such circumstances, dispute settlement machinery would play a very important role.

42. It might perhaps be premature at that stage in the Committee's proceedings to suggest in what form new articles, forming a separate Part, might be included in the convention. An attempt had been made in that direction by the delegation of the Netherlands in the form of a proposed new article, co-sponsored by Denmark (A/CONF.117/C.1/L.25 and Add.1). While his delegation appreciated the intentions underlying that proposal, it nevertheless felt that the matter required general consultation and a broad consensus on the adoption of suitable articles governing dispute settlement.

The meeting rose at 1.05 p.m.

35th meeting

Friday, 25 March 1983, at 3.10 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 33 (Date of the passing of State debts)

1. Mr. SHASH (Egypt), introducing, on behalf of its sponsors, the amendment contained in document A/CONF.117/C.1/L.49, said that the reasons which had prompted his delegation to submit amendments to articles 10, 11 and 22 had also prompted it to propose amendment of article 33. While the sponsors agreed with the basic principles enunciated in the draft article, they felt that it should include some provision for a decision by an appropriate international body. Such an amendment, in addition to meeting the concerns of some delegations, would make Part IV consistent with the other Parts of the draft convention.

2. Mr. JOMARD (Iraq) expressed support for the amendment.

3. The CHAIRMAN said that, in the absence of further comment, he would take it that the Committee agreed to adopt the amendment without a vote.

It was so decided.

4. The CHAIRMAN said that he also took it that the Committee agreed to adopt article 33, as amended, without a vote, and to refer it to the Drafting Committee.

It was so decided.

Article 34 (Effects of the passing of State debts with regard to creditors)

5. Mr. RASUL (Pakistan), introducing the amendment submitted in document A/CONF.117/C.1/L.12, said that his delegation could not see the real import of paragraph 2(*a*) of the draft article, despite the explanations provided by the International Law Commission in paragraph (11) of its commentary. His delegation did not take a very firm position on its amendment and would be pleased to withdraw it if the Expert Consultant could satisfactorily explain paragraph 2(*a*), and if the Committee, in the light of that explanation, were to decide that that subparagraph had a definite and independent meaning and should be retained.

6. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation welcomed the clear formulation of the rule contained in paragraph 1 of article 34. It was juridically well founded and necessary in a draft convention which contained, in other articles, provisions that might be misunderstood without a clear rule to protect the rights of creditors. That rule belonged to the sphere of codification since it was a restatement of a rule of general international law. It was also in line with article 12, which was concerned with the rights of third States.

7. His delegation had some difficulty however in understanding the exact meaning of paragraph 2 of article 34, and particularly its relation to the rule embodied in paragraph 1. Paragraph 2(*a*) indicated that an agreement between the predecessor State and the successor State could be invoked against a third State provided that the consequences of that agreement were in accordance with the provisions of Part IV; the only conclusion therefore was that it was not necessary for the third State to have accepted the agreement. If acceptance were a prerequisite under subparagraph (*a*), then the two subparagraphs should not be connected by the word "or" but by the word "and", because paragraph 2(*b*) clearly referred to acceptance of the agreement by the third State. Instead of there being a cumulative connection therefore, the two subparagraphs had been presented as alternatives.

8. On that basis, the first question which arose was whether or not the rule contained in paragraph 2(*a*) violated the principle of *pacta tertiis nec nocent nec prosunt*, which was embodied in article 34 and subsequent articles of the 1969 Vienna Convention on the Law of Treaties.[1]

9. Paragraph (11) of the International Law Commission's commentary clearly referred to that rule of general international law in stressing that paragraph 2(*a*) dealt only with the consequences of the agreement and not with the agreement itself, whose effect would be subject to the general rules of international law concerning treaties and third States. The commentary also referred to articles 34 and 36 of the 1969 Vienna Convention. If the general rules applied, his delegation failed to understand why the International Law Commission had made a distinction between the two cases in subparagraphs (*a*) and (*b*). There was no reason why subparagraph (*a*) could not be deleted. If however subparagraph (*a*) was intended to establish a rule whereby an agreement could be invoked against a creditor State without prior acceptance by the latter, the inner logic of article 34 in its relationship to article 35 was incomprehensible.

10. According to paragraph 1 of article 34, a succession of States did not as such affect the rights and obligations of creditors, even though that entailed the consequence that State debts passed to the successor State in accordance with the provisions of section 2 of Part IV. According to paragraph 2(*a*) of article 34, however, an agreement whose consequences were in accordance with the provisions of article 35 did affect the rights and obligations of creditors, because it could be invoked against a third State.

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[1] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

11. From a creditor's point of view, an agreement between the predecessor and the successor State could have considerable consequences even if it was in perfect harmony with section 2 of Part IV. If the succession took place in equal harmony with section 2 of Part IV, however, but without an express agreement, then the position of the creditor remained unaffected by virtue of paragraph 1 of article 34. His delegation could see no explanation for that inconsistency and therefore supported Pakistan's request for a clear explanation of what the Commission had in mind.

12. Mrs. BOKOR-SZEGÖ (Hungary) also called for the help of the Expert Consultant in connection with paragraph 2(*a*) of article 34. As she understood it, where the consequences of the agreement were in accordance with the provisions of Part IV and the third State was also a party, an agreement was not necessary. However, in the case of an international organization, which could not be a party to the convention, did the rule *res alius inter acta* apply?

13. Mr. PIRIS (France) said that paragraph 2 of article 34, as it stood, imposed an agreement concluded between two States on a third State which might or might not be party to the future convention. The wording of the paragraph was not clear and required revision. He suggested that the reference to an international organization or any other subject of international law should be deleted from the main part of paragraph 2, since neither could become a party to the convention, or that both subparagraphs (*a*) and (*b*) should be replaced by the following:

> "(*a*) if that third State is a party to the present convention and if the consequences of that agreement are in accordance with the provisions of the present Part; or
>
> "(*b*) if the agreement has been accepted by that third State".

As drafted, paragraph 2 was inadequate.

14. Mr. EDWARDS (United Kingdom) said that his delegation considered paragraph 2(*a*) as proposed by the International Law Commission defective and a possible source of misunderstanding. An agreement concerning the allocation of State debts between the States concerned could be invoked against a third State only if the latter had signified its acceptance of the agreement in some appropriate manner. There were very serious juridical objections therefore to paragraph 2(*a*), as the representative of the Federal Republic of Germany had eloquently pointed out. Those objections could be met, however, by adoption of Pakistan's amendment. Another possibility, which would be less satisfactory, would be to make subparagraphs (*a*) and 2(*b*) conjunctive, linking them with the word "and" instead of the word "or".

15. Mr. BEDJAOUI (Expert Consultant) suggested that, in view of the complexity of paragraph 2(*a*), the Committee should postpone its decision on article 34 until the next meeting.

16. Mr. OESTERHELT (Federal Republic of Germany) said that he could agree to a postponement of action by the Committee of the Whole on article 34. Such had been the thought and spirit behind the unfortunately defeated Canadian proposal concerning all the articles of Part IV in the light of their complexity and close interrelationship.

It was decided to defer further consideration of article 34 and the amendment thereto until a later stage.

New article 24 bis (Preservation and safety of State archives) (*continued*)*

17. Mr. A. BIN DAAR (United Arab Emirates) introduced the revised version (A/CONF.117/C.1/L.50/Rev.1) of his delegation's proposal. It was based on the substance of the original text and the essential elements of the suggestions put forward by other delegations during the discussion. His delegation hoped that its revised amendment might be adopted without a vote and that delegations which still had reservations concerning it would agree simply to place their reservations on record.

18. Since archives had been destroyed in the past in the process of succession and since State property had also been destroyed, steps should be taken by the Conference to ensure that such instances did not recur in the future. That concern was a legitimate one and was consistent with the purposes and meaning of the proposed convention and of the Conference. Should the revised amendment be accepted, his delegation would be in favour of including a similar provision in Part II, wherever appropriate and perhaps as article 9 *bis*, in the interest of consistency.

19. Mr. HAWAS (Egypt) said that the revised version of the proposal submitted by the United Arab Emirates responded to many of the concerns which had been voiced earlier. The Egyptian delegation maintained the views it had expressed previously and considered that the revised text could be approved without a vote. The Drafting Committee might perhaps consider whether article 24 and the proposed new article 24 *bis* would not be better combined.

20. Mr. ROSENSTOCK (United States of America) said that his delegation could not accept the revised amendment in document A/CONF.117/C.1/L.50/Rev.1. Article 18 of the 1969 Vienna Convention imposed an obligation to refrain from frustrating the object and purpose of a treaty. In order to meet the concern that material should not be damaged, and instead of assuming bad faith from the outset, a new article could be inserted in Part I, to read as follows:

> "Where there is an obligation to transfer property or archives, there is a consequential obligation of due care to avoid damage or deterioration prior to transfer."

21. Such a provision, particularly if placed in the general part of the draft convention, would in certain respects go beyond the proposed new article 24 *bis*. His delegation did not insist on its proposal but felt that it might meet the concerns of other delegations which, like his own, could not accept article 24 *bis* as proposed by the United Arab Emirates.

22. Mr. BOSCO (Italy) said that, in the view of his delegation, it would be more appropriate to consider the revised proposal of the United Arab Emirates in a different context from that of the convention.

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* Resumed from the 33rd meeting.

23. Destruction of a part of State archives could be carried out in good faith. That was certainly the case at his own country's Ministry of Foreign Affairs, which every year burned tonnes of documents for which it would have been impossible to find storage space. It was of course true that archives could be damaged or destroyed in bad faith; in such a case the State which had permitted such damage or destruction would be responsible. The question of State responsibility was, however, thorny and was under consideration by the International Law Commission which was preparing a text on the subject. The point at issue should perhaps be considered in that context. There was no provision in the convention covering wrongful acts. To contemplate the possibility of such wrongful acts in a particular case would involve the introduction of an extraneous concept into the convention and would have the effect of unbalancing the harmony of the text.

24. If, however, it was felt desirable to introduce such a provision, his delegation would be prepared to support the proposal made by the representative of the United States.

25. Mr. RASUL (Pakistan) considered that the revised proposal of the United Arab Emirates should be approved without a vote.

26. Mr. KIRSCH (Canada) said that, as the representative of the United States had suggested another approach to the problem, delegations might wish to consult with a view to discussing the possibility of producing a text which could be adopted without a vote.

27. The CHAIRMAN agreed with the representative of Canada. He was not sure, however, whether the proposal of the United States representative was an amendment or a proposal for insertion of a new article.

28. Mr. ECONOMIDES (Greece), supported by Mr. LAMAMRA (Algeria), suggested that the Committee might wish to accept the revised proposal of the United Arab Emirates without a vote and to refer it to the Drafting Committee with the suggestion that it consider the possibility of producing a text which would also cover State property and which could then be included in Part I.

29. Mr. ROSENSTOCK (United States of America) said that it had become clear to his delegation, when it had received the revised version of the proposal of the United Arab Emirates, that a vote on that text would be required. In his view, adoption of the Greek representative's suggestion would not solve the problem. He had hoped that it might be possible to include in Part I of the convention a more generally acceptable provision along the lines he had indicated. Such a provision might be sufficient to meet the concerns which had given rise to the proposed article 24 *bis*, while at the same time avoiding the problems that some delegations, including his own, faced in connection with the proposed article.

30. Mr. MONNIER (Switzerland) said that the idea incorporated in the revised proposal was generally acceptable and the concern which had given rise to the proposal must be respected. It was desirable to find a formula which could be accepted without a vote. The proposal of the Canadian representative therefore merited consideration.

31. The representative of the United States had proposed another formula which differed from the proposal of the United Arab Emirates both in wording and in basic content and which would cover not only State archives but also State property. He therefore wished to be informed whether, in the circumstances, the delegation of the United Arab Emirates maintained its proposal.

32. Mr. A. BIN DAAR (United Arab Emirates) said that the essence of his delegation's proposal was not in contradiction with the proposal of the United States representative.

33. His delegation supported the suggestion of the representative of Greece that the revised proposal contained in document A/CONF.117/C.1/L.50/Rev.1 should be adopted by consensus. The Drafting Committee might then consider the possibility of using that text as the basis of two separate articles, one for inclusion in Part II and the other for the inclusion in Part III.

34. Mr. EDWARDS (United Kingdom) said that his delegation could not accept the revised proposal of the United Arab Emirates, for reasons which he had already explained. It could therefore not join any consensus on that text. While his delegation would, as a matter of principle, prefer not to see proposed article 24 *bis* adopted, it could agree to the proposal of the United States representative and would be willing to assist in drafting an appropriate text for submission to the Committee.

35. He would, however, insist on a vote being taken on the proposal contained in document A/CONF.117/C.1/L.50/Rev.1.

36. Mr. PIRIS (France) said that he could not accept the revised proposal of the United Arab Emirates without a vote, in view of legal issues which might arise in connection with its assumption of bad faith. He agreed with the representative of Canada regarding the desirability of further consultations.

37. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee wished to defer further discussion of the proposed new article 24 *bis* and the new article proposed orally by the United States representative until a later stage.

It was so decided.

Article 35 (Transfer of part of the territory of a State)

38. Mr. RASUL (Pakistan), introducing the amendment submitted in document A/CONF.117/C.1/L.13, said that his delegation understood that the purpose of paragraph 2 of article 35 was to cater for the situation which would result from the failure of the States concerned to reach agreement on the passing of debts. Paragraph 2 was therefore intended to afford the States concerned an alternative but automatic method for the determination of the portion of debts to be passed to the successor State.

39. His delegation had no difficulty in accepting the basis of the paragraph itself but felt that, for both legal and practical reasons, the presence of the words "in an equitable proportion" could frustrate the intent of the paragraph. The words could refer either to the principle of *ex aequo et bono* as incorporated in Article 38 of the

Statute of the International Court of Justice or to the concept of equity. If the words referred to the former, then the application of the principle would be subject to the agreement of the States concerned. That raised the question of the difference between such an agreement and the agreement envisaged in paragraph 1 of the article. It could be argued that, while the agreement envisaged in paragraph 1 was an agreement finally settling the question of debts, the other was simply an agreement on application of the principle. It was consequently necessary to determine who would apply the principle. It could be applied by a third party such as a court or an arbitral tribunal, or by the States concerned themselves.

40. While the International Law Commission's commentary did not indicate that it was the intention of the Commission that paragraph 2 called for settlement by a third party, application of the principle by the States concerned would convert the paragraph into an ironical provision because, if the States were expected first to agree to apply the principle of *ex aequo et bono* and then to reach a second agreement on application of the principle, that would imply that whatever was agreed by the States was not based on the principle. The dangers implicit in such a situation were clear.

41. If, however, the words "in an equitable proportion" referred to the concept of equity, then it should be borne in mind that equity was not a principle of international law. His delegation was not opposed to the efforts of the International Law Commission to draw on a concept of municipal law if it fitted the situation and helped to alleviate rather than accentuate the problems of the States concerned. Such a concept could, however, be applied only by a court or an arbitral tribunal.

42. The practical reasons for his delegation's opposition to the phrase related basically to the manner in which "an equitable proportion" would be determined. Such determination could be made either by laying down a universal formula or by the States concerned through agreement. In the view of his delegation, it would be almost impossible to produce such a formula for the simple reason that the words "equitable proportion" emphasized the fact that each case had to be treated on its merits.

43. Mr. MARCHAHA (Syrian Arab Republic) said that, since the principal points his delegation had wished to introduce through its amendment (A/CONF.117/C.1/L.38) were largely covered by the text of article 36 as drafted by the International Law Commission, his delegation would withdraw its amendment but reserved the right to revert to the matter when the Committee of the Whole took up draft article 36.

44. Mrs. THAKORE (India) said that her delegation supported the International Law Commission's text of draft article 35, which reflected State practice. It was therefore unable to support the amendment submitted by Pakistan.

45. Mr. BEDJAOUI (Expert Consultant) expressed doubts as to the wisdom of deleting the reference to the notion of equity in paragraph 2 of article 35. Were that reference deleted, then an exact correspondence would have to be established between movable and immovable property which passed to the successor State and the share of the debt which passed to that State. He was not sure if that could cover all situations equitably. The part of the territory which passed to the successor State might well have contributed in a substantial manner to the activity of the predecessor State and might have no connection with that part of the movable or immovable property which passed to the successor State under article 13, paragraph 2. The insertion of the idea of an equitable proportion seemed to rectify the rather mechanical correspondence between the property and the debt which passed to the successor State. If the text of paragraph 2 of article 35 was maintained unchanged, it would not necessarily have a limiting effect but might even broaden the scope of the article. He was aware, however, that problems might arise precisely because of the introduction of the idea of equity. He himself had no firm views on the matter but he thought it preferable to maintain the original wording in order to ensure greater flexibility.

46. Mr. NATHAN (Israel) said that paragraph 2 of article 35 presented certain problems. Under the first part of that paragraph, it appeared that the successor State would assume a certain proportion of the general debt of the predecessor State whereas, in the second part, he was somewhat puzzled by the use of the phrase "that State debt", which could be interpreted as a reference to what was known in international law as a localized debt, namely, a debt incurred by the predecessor State and having specific reference to the part of the territory transferred to the successor State because it was specifically attached to it. If the reference was indeed to such a localized debt, the debt should indeed pass *in toto* to the successor State, being a specific encumbrance on a specific piece of property which passed to the successor State in accordance with the maxim *res transit cum onere suo*.

47. However, if the reference was not to such a specific debt but rather to the general State debt of the predecessor State, it would be necessary, in order to avoid confusion, to establish specific criteria for the passing of an equitable proportion to the successor State. The main criterion would be the general benefit derived by the successor State as a result of the transfer of part of the territory from all the property, rights and interests transferred. He would welcome clarification on that point.

48. Mr. PIRIS (France) reminded the Committee of its lengthy discussion concerning article 13, paragraph 1 (11th and 12th meetings), which contained the words "when part of the territory of a State is transferred by that State to another State". At that time his delegation had submitted an amendment (A/CONF.117/C.1/L.16 and Corr.1) calling for the deletion of the words "by that State". Unfortunately, that amendment had not been adopted. He now wished to propose the deletion of the words "by that State" from article 35, paragraph 1, and also the deletion of paragraph 2 of article 38. His delegation had no difficulty in accepting the reference to "an equitable proportion" in article 35, paragraph 2.

49. Mr. ECONOMIDES (Greece) expressed his delegation's support for the draft article because in that provision the notion of an equitable proportion was accompanied by objective criteria.

50. The CHAIRMAN invited the Committee to vote on the amendment submitted by Pakistan (A/CONF.117/C.1/L.13).

The amendment was rejected by 40 votes to 1, with 18 abstentions.

51. The CHAIRMAN invited the Committee to vote on the text of article 35 as proposed by the International Law Commission as a whole.

Article 35 as proposed by the International Law Commission was adopted by 57 votes to none, with 5 abstentions and referred to the Drafting Committee.

52. Mr. PIRIS (France) said that he had voted in favour of draft article 35 but wished the points he had made before the vote to be reflected in the summary record of the meeting.

53. Mr. ABED (Tunisia) said that his delegation had voted in favour of article 35 as proposed by the International Law Commission because it responded to the objectives pursued.

54. Mr. EDWARDS (United Kingdom) said that his delegation had abstained in the vote on article 35 because paragraph 2 contained the unsatisfactory formula "in an equitable proportion". His delegation had explained, with reference to other articles where that phrase occurred, why it considered it unsatisfactory.

55. The United Kingdom delegation had also been unable to vote in favour of Pakistan's amendment because, although it deleted that particular phrase, it left paragraph 2 in an unsatisfactory form since there would still be no objective test.

56. Mr. RASUL (Pakistan) said that his delegation had voted in favour of the draft article, despite the rejection of its own amendment, because the remainder of the text proposed by the International Law Commission was acceptable.

57. Mr. SUCHARIPA (Austria) reminded the Committee that, during the discussion of article 31, his delegation had welcomed the detailed analysis of the different kinds of State debts in the International Law Commission's commentary but had regretted that no actual application of that analysis had been made in the following articles. That had led to the introduction of the concept of equity into article 35, which caused his delegation some disquiet. His delegation therefore had some sympathy for the amendment submitted by Pakistan. Even if that amendment had been adopted, however, some elements would still have been lacking in the text of article 35.

58. Consequently, his delegation had felt obliged to abstain in the vote on the amendment of Pakistan. It had, however, voted in favour of article 35 as proposed by the International Law Commission because it supported the main thrust of that text.

59. Mr. MURAKAMI (Japan) said that, while his delegation had voted in favour of the draft article, it considered the phrase "in an equitable proportion" too vague.

60. Mr. KADIRI (Morocco) said that his delegation had also voted in favour of the draft article because it supported the introduction of the idea of equity in relations between the predecessor and successor States.

61. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had abstained in the vote on draft article 35 because of its close interrelation with the other articles in Part IV. It felt unable to take a definitive position on article 35 until questions raised in other articles had been answered.

62. Mr. SHASH (Egypt) said that his delegation had voted in favour of the draft article. It had no objection to the inclusion in that text of the phrase "in an equitable proportion" since paragraph 2 provided for taking into account *inter alia* the property, rights and interests which passed to the successor State. His delegation's interpretation of paragraph 1 of the article was that the agreement between the States would take into account the criteria mentioned in paragraph 2.

Article 36 (Newly independent State)

63. Mr. ECONOMIDES (Greece), introducing his delegation's amendment (A/CONF.117/C.1/L.51), said that a positive wording had been used in preference to a negative formula, because it avoided certain misinterpretations to which the latter might have given rise. The text followed the wording already used in the 1978 Vienna Convention on Succession of States in Respect of Treaties[2] by referring to every people and every State. That wording should be used whenever there was no imperative reason against it.

64. His delegation had also introduced the words "in accordance with international law" because, in earlier discussion, all members of the Committee of the Whole had seemed to agree that it provided a useful safeguard to ensure that the provision would be applied only in so far as it was consistent with international law. That avoided any application based merely on national law. The amendment also called for the deletion of the last phrase of paragraph 2 of the International Law Commission's text, because of its imprecision.

65. Mr. BOSCO (Italy) said that the fact that his delegation had submitted an amendment (A/CONF.117/C.1/L.52) to paragraph 1 of article 36 did not affect its position on the article as a whole, nor on paragraph 2, with respect to which his delegation had strong reservations. His delegation had deemed it necessary to introduce into paragraph 1 a reference to debts relating to public works in the process of execution in the territory of the successor State from which the predecessor State had derived no benefit.

66. Mrs. THAKORE (India) expressed her delegation's satisfaction with the International Law Commission's text of article 36. Paragraph 1 set out the two necessary conditions for the conclusion of an agreement between the predecessor and successor State and paragraph 2 was designed to avoid exploitation and to ensure that the debt liability of newly independent States, all of which were developing countries, did not impose impossible financial burdens upon them. In that connection, she referred to paragraphs (62) and (65) of the International Law Commission's commentary on the article.

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[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

67. The text of article 36 was the result of a compromise between those members of the International Law Commission who had considered that the article should stipulate more categorically for the non-transferability of any debt whatsoever to the newly independent State and others, particularly from the developed countries, who had felt that it did not give sufficient weight to the need to assign to such States certain debts incurred for the benefit of the former dependent territory and who were in favour of a reference to the possibility of an agreement between the two States concerned.

68. Turning to the amendments to article 36, she said that the Italian proposal to add a reference to "public works in the process of execution" introduced into paragraph 1 an exception which was capable of a very broad interpretation and was therefore unacceptable. Her delegation also had serious reservations regarding the reformulation of paragraph 2, called for by the Greek amendment, since it considerably weakened the International Law Commission's text, which was cast in mandatory terms. It also made no reference to the safeguard that the implementation of agreements between the predecessor and the successor State should not endanger the fundamental economic equilibrium of the latter, to which her delegation attached extreme importance in view of the increasingly grave debt burden of the developing countries.

69. At the inaugural meeting of the recent Seventh Conference of Heads of State and Government of Non-Aligned Countries, Mrs. Gandhi had drawn attention to the fact that, since 1979, the debt burden of the developing countries had doubled to reach a total of US$ 600 billion. That alarming situation was being compounded by sharply rising trade deficits. The International Law Commission had therefore rightly taken the view that international law could not be codified or progressively developed in isolation from the political and economic context.

70. The problems connected with the succession of States in respect of State debts were more lasting than those in respect of treaties, State property or State archives and they should command the earnest attention of the Committee of the Whole. On the other hand, it should not be concluded that a newly independent State would not discharge its debt obligations, particularly when they had been incurred for its development. Indeed, the debt servicing records of developing countries had been excellent on the whole, but greater difficulties were likely to arise in the future. For that reason, the correlation between debt liability and development should never be overlooked: in view of the history of colonialism, that was the humanitarian approach to be adopted in the progressive development of international law.

71. Mr. MARCHAHA (Syrian Arab Republic) reiterated the view he had expressed in his comments on article 14 (14th meeting), namely that newly independent States were in need of the protection of international law. He therefore supported the International Law Commission's text of article 36. His delegation would be unable to support the Italian amendment to paragraph 1, which it found ambiguous. It was not sufficient that public works should be in the territory of the successor State. They must be first and foremost for the benefit of the successor State. In many instances that had not been the case. Furthermore, the term "public works" was also ambiguous since the definition varied according to internal law.

72. With regard to the Greek amendment, his delegation had never been opposed to reference to international law. Its main objection to the amendment was that it would weaken the mandatory effect of paragraph 1, which was of great importance. In spite of certain guarantees provided in the 1969 Vienna Convention, a newly independent successor State was in a weak negotiating position. His delegation was therefore unable to support the Greek amendment. The question arose as to who should interpret the term "fundamental economic equilibrium" contained in paragraph 2 of article 36 in specific cases. In his view, it should be decided by an appropriate international organization.

73. Mr. ROSENSTOCK (United States of America) said that, although there was some justification for special treatment for newly independent States in regard to debts, the International Law Commission's text of article 36 was not acceptable. Paragraph 1 was far too broad in its rejection of the passing of debt and reflected neither sound law nor prudent policy. Any prospect for agreement in that area would be along the general lines proposed in the Italian amendment, with appropriate modifications.

74. Paragraph 2 of the draft article was completely unacceptable. The concept of "economic equilibrium" and the extensive International Law Commission's commentary on the debt burden of developing countries had no place in the work of the International Law Commission, which had considerable responsibility for the intellectual confusion which had plagued the Conference. Issues relating to succession had been mixed up with issues of economic development, to the detriment of all concerned. Countries might vary in their degree of wealth and democracy but they were all predecessor States. That was a characteristic that Algeria, the Soviet Union and the United States shared in common. To divide along the lines of developed and developing countries was a reflex action irrelevant to the future of the draft convention. He urged delegations to unite in an attempt to develop sensible rules for the future.

75. Mr. MUCHUI (Kenya) said that his delegation supported the International Law Commission's text of article 36, which was well balanced and took account of the economic realities attendant upon the succession of States in the case of newly independent States. It was an important step forward in the development of international law.

76. The Italian amendment was unacceptable because it proposed an exception to the general rule which was ambiguous in view of the broad interpretation which might be given to the term "public works". The Greek amendment resembled a similar one which had been proposed in respect of article 14, paragraph 4. He had stated at that time *(ibid.)* that such an amendment was unacceptable because it attempted to water down the important principle of permanent sovereignty over wealth and natural resources. The Greek amendment

also deleted the last part of paragraph 2 of article 36, which contained a very important provision.

77. Mr. TÜRK (Austria) said that his delegation was not happy with the International Law Commission's text of article 36. One of its drawbacks was that it made no distinction between the different categories of State debts. In that connection he drew attention to the distinction made in paragraph (18) of the Commission's commentary on article 31 between local debt and localized debt. Although he favoured special treatment for newly independent States, the rule stated in paragraph 1 of the draft article went beyond protection of the legitimate interests of such States: it was not in accordance with State practice and it was not consistent with the principle *res transit cum suo onere*.

78. He found the arguments in the commentary unconvincing, particularly those relating to the weak financial position of newly independent States. Other countries were in a similar position. Austria played an active role in the North-South dialogue, but his delegation nevertheless considered the economic considerations which had been adduced to be out of place at a codification conference. Local debts should pass to the successor State and any exceptions should be determined by means of an agreement.

79. His delegation much preferred to the present draft article 36 the provision in footnote 468 in paragraph (67) of the International Law Commission's commentary on that article. Paragraph 1 of that text attempted to strike a balance between divergent interests, having regard to the basic principle of equity. Paragraph 2 contained terminology with regard to permanent sovereignty over natural resources that was to be found in the International Covenant on Economic, Social and Cultural Rights and in the International Covenant on Civil and Political Rights[1] which most Members of the United Nations had ratified.

80. His delegation could accept the Greek delegation's reformulation of that paragraph and it would give further study to the Italian amendment to paragraph 1 of the draft article.

The meeting rose at 6 p.m.

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[1] General Assembly resolution 2200 A (XXI).

36th meeting

Monday, 28 March 1983, at 10.25 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 36 (Newly independent State) (*continued*)

1. Mr. SHASH (Egypt) said that article 36 as proposed by the International Law Commission was a well-balanced provision which sought to regulate the passing of State debts to newly independent States on the basis of equity. The article as it stood consisted of a general rule, an exception and an imperative rule. The rule was that no State debt should pass from the predecessor State to a newly independent State unless an agreement was concluded between them; however, such agreement had to fulfil certain conditions. Paragraph 2 set forth the imperative rule applicable to agreements between the predecessor and the successor State, namely, that they should not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor should their implementation endanger the fundamental economic equilibrium of the newly independent State.

2. As his delegation had already pointed out in respect of article 14 (15th meeting), the principle of permanent sovereignty of peoples over their wealth and natural resources was, in its view, a recognized principle of international law. The economic equilibrium of the newly independent State was an important concept on which there was a consensus in present economic international relations. Accordingly his delegation supported the International Law Commission's text of article 36.

3. On the other hand, it would have difficulty in accepting the amendments to article 36 submitted by Greece (A/CONF.117/C.1/L.51) and Italy (A/CONF.117/C.1/L.52), which could affect the balance of the article.

4. Mr. EDWARDS (United Kingdom) said that his delegation found article 36 as proposed by the International Law Commission quite unacceptable. Paragraph 1 set out a basic rule that, in the case of newly independent States, no State debt should pass to the successor State. An agreement between the predecessor State and the newly independent State could be concluded as an exception to that rule, subject, however, to stringent conditions. Clearly, there would be little incentive for a newly independent State to reach such an agreement since, if it did not do so, no State debt would pass to it. It therefore seemed rather pointless for the text proposed by the Commission even to mention the possibility of such an agreement being concluded. Moreover, the implications of the expression "in view of the link" in paragraph 1 were not at all clear; if no such link existed, was the agreement null and void?

5. His delegation believed that a more appropriate rule which was, moreover, justified by State practice

would be one based on the criterion of the extent to which a loan might have been of utility or of evident benefit to the formerly dependent territory. More important, such a rule would be sensible, fair and reasonable.

6. It was, in addition, difficult to understand why the Commission had drawn a distinction between article 35, which provided for the passing of "an equitable proportion" of State debt to the successor State, and article 36, which provided in effect that no State debt should pass at all.

7. The International Law Commission's commentary on article 36 considered at some length the financial situation of newly independent States; he wondered, however, whether the Commission was really competent to deal with such matters. He also drew attention to the fact that some of the States whose financial situation was described in the commentary (in a section supposed to be concerned with newly independent States) had been independent for well over a century; indeed, in one case the State in question had probably been independent since medieval times.

8. With regard to paragraph 2, his delegation wished to refer to its statements in connection with article 14, paragraph 4 (13th meeting); article 26, paragraph 7 (28th meeting); article 28, paragraph 3 (29th meeting), and article 29, paragraph 4 (30th meeting). In addition, it could not accept the phrase "the fundamental economic equilibria of the newly independent State", which it considered vague and imprecise.

9. The Italian amendment would provide an important exception to the rule of the non-passing of State debts proposed by the International Law Commission, while the amendment proposed by Greece was a useful compromise text. While his delegation would have preferred to see paragraph 2 deleted, it was prepared to support the Greek amendment.

10. Mr. KIRSCH (Canada) said that his delegation had difficulties of both a legal and a more general nature with article 36 as proposed by the International Law Commission.

11. From the legal standpoint, his delegation supported the concept of the permanent sovereignty of every people over its wealth and natural resources, as a general principle designed to promote national development. In the absence, however, of the necessary consensus on the content and scope of that concept, it could not be adduced as a general rule of law. In his delegation's view, the amendment submitted by Greece improved the International Law Commission's text.

12. His delegation had difficulty in understanding the exact meaning and legal implications of the requirement that an agreement concluded between a predecessor State and the newly independent State should not endanger the fundamental economic equilibrium of the newly independent State. The statements made in explanation of the general scope of that concept were not sufficient. The difficulties of interpreting that concept appeared to have been largely by-passed in the discussion. The reference to "public works" in the Italian amendment had, on the other hand, been criticized as too vague.

13. His delegation also had reservations concerning other terms used in article 36, which it had already expressed during the discussion of earlier provisions.

14. Another problem was the approach adopted in article 36. His delegation had no objection to special treatment being accorded to newly independent States, but questioned whether article 36, which created serious problems for some delegations, provided the solution. Other delegations had expressed the view that article 36 was well balanced. The question of balance was fundamental to the future convention: indeed, its viability would depend largely on the extent to which it was able to strike a balance between the often divergent concerns and interests of States. Although reference had been made to the compromise nature of article 36, the element of compromise was difficult to discern. The International Law Commission had evidently sought to take a practical approach: indeed, it could scarcely be faulted for confining itself to narrow legal considerations. The question that arose, however, was where the International Law Commission saw the incentive for a predecessor State to become a party to the convention. It might well be asked what would be the relevance of article 36 if no predecessor State became a party to the convention.

15. His delegation supported the suggestion made by the representative of Austria at the previous meeting, that the Committee should adopt, instead of the draft article proposed by the International Law Commission, the text referred to in paragraph (67) of the Commission's commentary and reproduced in footnote 468. That text was more equitable and flexible and its intent was clearer.

16. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation fully endorsed the International Law Commission's text of article 36. Like earlier articles relating to newly independent States, article 36 took the vital needs and interests of those States as its point of departure. Newly independent States could not start out saddled with debts with which they had no direct connection. The debts of former metropolitan colonial Powers should not be transferred to newly independent States even in those cases where the funds in question had been used in the interest of the former dependent territory, since clearly the metropolitan power would have derived greater benefit from its exploitation of the dependent territory than it had spent on that territory's development. His delegation would therefore have been able to support a provision that was limited to the general rule that no State debts should pass to newly independent States. The fact that derogations from that rule were foreseen, subject to certain conditions, was a compromise. It was essential therefore that those conditions should be clearly specified, as they were in article 36 as it stood. His delegation considered those conditions to be fully warranted, particularly the requirement that any agreement should respect permanent sovereignty over wealth and natural resources and should not endanger the basic economic equilibrium of newly independent States.

17. Consequently, his delegation was unable to accept the Italian amendment, which would place newly independent States under an obligation to conclude

an agreement with the predecessor State. With regard to the Greek amendment, his delegation preferred the original text, which set forth more cogently generally recognized norms of contemporary international law.

18. Mr. PIRIS (France) said that the statements made by his delegation during the consideration of articles 14 (13th meeting) and 26 (28th meeting), as well as in explanation of its vote on those articles, should be taken as reflecting its position on article 36.

19. Article 36 as a whole was unacceptable to his delegation. The general principle stated in paragraph 1 that State debts should not pass to newly independent States was not in accordance with State practice. Indeed, in paragraph (13) of its commentary the International Law Commission admitted there were precedents in favour of the passing of State debts and precedents against. The Commission appeared to have relied exclusively on extralegal considerations and such premises as that, in the future, predecessor States would always be wealthier than newly independent States and that advantage should be taken of State succession to rectify those imbalances. In his delegation's view, that was a matter for settlement by bilateral agreement. He associated himself with the United Kingdom representative's remarks concerning paragraph 1 of the draft article.

20. Paragraph 2 gave rise to concerns similar to those his delegation had expressed in connection with article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3 (29th meeting); and article 29, paragraph 4 (30th meeting). The provision should be completely reworded.

21. The International Law Commission's text of article 36 was not codification of international law: it represented an attempt by the Commission to develop international law. It could not therefore be imposed on States which did not accede to the future convention.

22. He expressed regret at and disagreement with certain statements in the International Law Commission's commentary, particularly regarding the concept of "equitable proportion", which was appropriate in other kinds of State succession, but raised problems in connection with article 36, as indicated in paragraph 63 of the commentary.

23. The Committee of the Whole should bear in mind that article 36 had been the subject of some disagreement among the members of the International Law Commission, as was noted in paragraph (67) of the latter's commentary where reference was made to an alternative text.

24. His delegation viewed the Italian amendment to article 36 as an effort to produce a more reasonable provision. However, since the amendment left much of the original text intact, it did not solve most of his delegation's problems with the article.

25. The Greek amendment was acceptable to his delegation, which favoured a similar type of compromise in respect of article 14, paragraph 4.

26. Mr. SKIBSTED (Denmark) said that his delegation could understand the motivation underlying the International Law Commission's text of article 36: the severe debt burden of a number of newly independent States was a problem that had to be recognized. From the legal point of view, however, article 36 created problems for his delegation, which had objections similar to those expressed by previous speakers. By stipulating that no State debts should pass to newly independent States unless agreed otherwise, the text offered no real encouragement for the successor State to have recourse to settlement by agreement. In fact, the freedom of the parties concerned to conclude such an agreement was so severely restricted as to be virtually non-existent.

27. As in the case of articles 14 and 26, a number of the criteria set forth in article 36, particularly paragraph 2, were too vague and imprecise to be applied as legal criteria. Consequently his delegation would be unable to accept article 36 as proposed by the International Law Commission. The Greek amendment, which removed some of the basic drawbacks of the Commission's text, would be a useful compromise.

28. Mr. BRAVO (Angola) said that, as the International Law Commission had recognized, the emergence of newly independent States was the most widespread feature of State succession in the last 25 years. As had already been noted, the economic situation of those States posed a dramatic problem. His delegation believed that the future convention should reflect the economic interests and realities of newly independent States. It therefore fully supported the draft article as proposed by the International Law Commission. For reasons of principle, it was unable to support the amendments submitted by the delegations of Italy and Greece, which did not serve the interests of newly independent States or promote the progressive development of international law.

29. Mr. DJORDJEVÍC (Yugoslavia) said that, like similar provisions in Parts II and III of the draft convention, article 36 had been drafted by the International Law Commission as a response to the effects of the decolonization process.

30. Recognizing the highly controversial and sensitive nature of the subject, particularly for newly independent States, the Commission had decided to adopt as a basic rule the non-passing of the State debt of the predecessor State to the successor State. At the same time, the Commission had not denied the possibility of agreements providing for the passing of such debt, because it was aware of the need of newly independent States for capital investment and assistance. Accordingly, provision was made for the conclusion of such agreements, certain conditions being laid down to ensure that they were based on considerations of equity. Such safeguard provisions were particularly important in relations between a former metropolitan Power and a former dependent territory.

31. His delegation therefore supported article 36 as proposed by the International Law Commission; it also fully endorsed the analysis offered at the 35th meeting by the representative of India in the light of the conclusions of the recent Conference of Heads of State or Government of the Non-Aligned Countries.

32. The Italian amendment left aside the basic principle contained in the International Law Commission's text, although there was no need to do so, because State

debts relating to public works could always be regulated by agreement between States. The Greek amendment was intended to reduce the scope and importance of paragraph 2. Both amendments would result in a substantial departure from the original purpose of the International Law Commission's text. His delegation was therefore unable to support them.

33. Mr. KOREF (Panama) considered that the International Law Commission's text of article 36 should be approved in its current form, since it covered all the likely possibilities of the States involved reaching an equitable agreement on the succession of State debts, while protecting the rights of newly independent States.

34. His delegation was unable to accept either of the two written amendments which had been submitted, nor the oral suggestions made for its revision, including the proposal by the Austrian delegation that the text should be replaced by the alternative text referred to in paragraph (67) of the International Law Commission's commentary. That alternative text, which had been supported by only "certain" members of the Commission, raised problems inasmuch as its paragraph 1 did not include the second part of paragraph 2 of the Commission's text—an element to which his delegation attached great importance.

35. Mr. OESTERHELT (Federal Republic of Germany) said that in principle his delegation supported the idea that newly independent States should have a privileged position in respect of the debts of the predecessor State. It shared many of the opinions expressed in the International Law Commission's commentary and agreed that article 36 involved to some extent the progressive development of international law, since State practice was not conclusive. As his delegation had stated in the Sixth Committee of the General Assembly, it would have welcomed a greater degree of flexibility, which it hoped would still evolve on the basis of the various proposals submitted.

36. In its commentary, the International Law Commission had raised the question whether article 36 did not come too late, since the decolonization process was virtually complete. Indeed, the impact of a rule designed for future application might be more limited than the discussion seemed to suggest. His own country had in the past demonstrated its concern for the situation of the developing countries in many ways, among others by granting debt relief totalling 3.6 billion DM to least developed countries on a voluntary basis.

37. Turning to the specific formulation of article 36, he noted that the legal implications of the expression "in view of the link"—an element referred to by the Commission in paragraph (64) of its commentary as a necessary condition—were not clear. If an agreement was not concluded in accordance with that criterion or if one of the parties involved thus asserted, what would the legal consequences be? Was that link a prerequisite for the validity of the agreement or merely a reference to the most likely motive for the conclusion of an agreement? The problem became even more complicated if one examined the various elements of the formula "in view of". It was not clear what would happen if a debt was considered as part of the "link" but was not connected with the predecessor State's activity in the territory or if it was argued that it was not connected. It was difficult to determine whether the agreement would nevertheless be valid.

38. His delegation therefore considered it preferable either to delete the phrase "in view of the link" or to replace it by a less ambiguous formula.

39. Turning to paragraph 2, he reiterated his delegation's position that the principle of permanent sovereignty of every people over its wealth and natural resources was part of international law and that its exercise was subject to international law. In that connection, he drew attention to his delegation's statement at the 15th meeting. However, as his delegation had pointed out at the 28th meeting, serious legal consequences could arise as the result of a violation of a rather general principle. His delegation would therefore greatly prefer the formulation proposed by the delegation of Greece in its amendment.

40. Nullity *ab initio* was the most drastic means of remedying the deficiencies of an agreement; it should thus be employed only in the most exceptional cases. In the case of not only article 36, paragraph 2 but also article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3 and article 29, paragraph 4, his delegation was quite unable to accept any notion of a nullity derived from a source other than the sovereign will of States which were parties to the future convention and to the relevant devolution agreement. More specifically, it did not consider those principles to be *jus cogens*.

41. Assuming that the use of the word "shall" in paragraph 2 implied nullity *ab initio*, an additional problem arose in connection with the rule that devolution agreements should not "endanger the fundamental economic equilibria" of the newly independent State. Long after the conclusion of the agreement, it might transpire—or it might be claimed by one of the parties—that its implementation endangered such economic equilibria. The fate of the agreement in the interim period was then in question. Was it void from the outset, together with all acts performed under it, or did it become void only as soon as its implementation endangered fundamental economic equilibria? If nullity *ex tunc* was implied, his delegation would see that as an additional factor militating against paragraph 2.

42. More than any other provision, article 36 convincingly demonstrated the need for the binding third-party settlement of disputes. In the absence of such settlement, there was a risk that article 36 and similar provisions could not be implemented and could even contribute to legal insecurity. The aim of the future convention should be to contribute to security in the application of the rule of law in international relations.

43. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that her delegation supported article 36 as proposed by the International Law Commission. It did not share the view of those who considered that the article lacked balance since the basic principle that debts should not pass to a newly independent State—to which her delegation adhered—was given some flexibility by the provision for agreement on the passing of debts in certain circumstances. The provision for such agreement offered the compromise solution that was needed.

44. Moreover, arguments similar to those adduced during the discussion of article 14 lacked validity. The proponents of such arguments had stated that the decolonization process was finished; but the effects of colonization remained. Her delegation therefore agreed with the International Law Commission's commentary on the article. The question of the indebtedness of ex-colonies would not be solved easily and the norms being developed at the present Conference would therefore be of importance for the international community. Norms could not, however, be developed in a vacuum: the world situation and the debt burden of the developing countries must be taken into account. Many international forums, representing the opinion of the majority of States, had expressed concern about the need to settle the problem of the indebtedness of the young developing countries and the present Conference should therefore seek to develop norms which would facilitate the normal development of those countries.

45. Article 36 as drafted was, in her delegation's view, logical and equitable. It adequately reflected the goals to be achieved. The Italian amendment would only weaken it.

46. Mr. MONNIER (Switzerland) said that his delegation was prepared to adopt a more favourable position towards draft article 36 than towards certain other provisions. In its present form, however, it gave rise to a number of legal problems. The article stated that debts should not pass to a newly independent State unless an agreement provided otherwise. The conditions for such agreements were then set out and the article established a requirement for their validity in international law.

47. In the first place, that validity rested on the principle that the agreement should not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, wording which was similar to that used in article 14, paragraph 4; article 26, paragraph 7, and article 29, paragraph 4. In view of the opposition to such wording which had been expressed, his delegation regarded the Greek amendment as offering a compromise solution and could support it.

48. As far as the content of the agreement was concerned, the second part of paragraph 1 of article 36 provided that there must be a link between the predecessor State's debt and the property, rights and interests passing to the successor State. That provision was more stringent than the one in article 35, paragraph 2. To have used similar wording to that of the latter article would have allowed the conditions in the present case to be more precisely stated.

49. Paragraph 2 of the draft article referred to the effects of implementation of the agreement. While sympathizing with the principle underlying the paragraph, his delegation considered that the wording, and particularly the reference to the "fundamental economic equilibria" of the newly independent State, was open to criticism. In that connection, paragraph (65) of the International Law Commission's commentary was somewhat disturbing in that it indicated that the expression was to be interpreted "in a broad sense, covering all kinds of economic, financial (including indebtedness) and other factors". Thus, the limitations and prohibitions determining the contractual freedom of the newly independent State were stated in terms of its sovereignty. Some speakers had considered that paragraph 2 provided balance but he wondered whether, in the light of those conditions, there was any incentive for the States concerned to conclude any agreement on the passing of debts.

50. His delegation therefore considered that agreement on article 36 would be reached only if a compromise was adopted, either on the lines of the alternative text referred to in paragraph (67) of the International Law Commission's commentary or by accepting the analogous Greek amendment.

51. The Canadian representative had rightly drawn attention to the need to ensure that the future convention was of practical value. The Conference was drawing up, not a General Assembly resolution, but a treaty incorporating rules. Even if the rules were to be taken only as models, they should be applicable. He therefore urged the participants in the Conference to accept a compromise.

52. Mrs. VALDÉS (Cuba) said that her delegation attached particular importance to article 36, as the process of decolonization was not yet complete, the economies of many recently independent countries being still closely linked to those of the former metropolitan Powers. The article was well balanced, took due account of the interests of newly independent States and therefore had her delegation's support.

53. Her delegation gave its full support to paragraph 2, which incorporated a universally accepted principle and provided a safeguard clause. It could not support the amendments which had been submitted, because they restricted the scope of the article.

54. Mr. PHAM GIANG (Viet Nam) said that article 36, like articles 14 and 26, provided indispensable protection for newly independent States. He expressed his delegation's appreciation of the International Law Commission's masterly analysis of past international practice and of its view that the present alarming economic and financial situation of those States necessitated a sympathetic solution if those States were to become viable.

55. In stating the principle that no State debt of the predecessor State should pass to the newly independent State, the International Law Commission had not stated anything new but had merely reflected international practice which had been followed since the time when the United States of America itself had been a newly independent State. In the light of that and many other precedents, including that of his own country, it could not be denied that the intransmissibility of debts formed part, not only of international law, but of the internal law of States. His delegation therefore considered that paragraph 1 of article 36 should be adopted as drafted.

56. Paragraph 2 of the draft article provided an opportunity for newly independent States, which had often been forcibly "married" to the former administrative Power, to proceed to a "divorce" by entering into an agreement freely and on equal terms, each respecting the political sovereignty and economic independence of the other. However, it also provided that such an

agreement must not endanger the fundamental economic equilibrium of the newly independent State. In his delegation's view, those two parts of paragraph 2 were well balanced, being based on equity and justice. They were also based on reason and feeling, and feeling must not be decried. His delegation therefore joined the Union of Soviet Socialist Republics and other socialist countries, as well as the members of the Group of 77, in supporting paragraph 2.

57. The amendments proposed by Greece and Italy went against the general trend of the International Law Commission's text. The Italian amendment introduced extraneous considerations by mentioning public works, whose object might, in fact, have been to repress an indigenous people. The Greek amendment was reminiscent of the amendment to article 14 proposed by the Netherlands delegation (A/CONF.117/C.1/L.18) and appeared to deny the principle on which article 36 was based.

58. In his delegation's view, the process of decolonization must redress the injustices of the past and, as the Indian delegation had suggested at the previous meeting, a humanitarian approach should be adopted to the problem of the debt burden of the newly independent States. A convention concluded on such lines would be of historic importance and would be a contribution towards a new understanding between former administrative Powers and their former colonies.

59. Mr. LAMAMRA (Algeria) said that the points his delegation had made during the discussion of paragraph 4 of article 14 (14th meeting) were applicable also to paragraph 2 of article 36, which his delegation supported, and were the reason why his delegation could not support the Greek amendment.

60. His delegation had serious misgivings concerning the Italian amendment. The expression "public works in the process of execution" was ambiguous and such works might, moreover, be considered unnecessary by the newly independent State. Such a broad formulation could even be construed as allowing the passing of certain debts contracted by the predecessor State either in the context of an economic policy tending to perpetuate its control over the territory concerned or in connection with its military or police activities directed against resistance by the people of that territory. That did not mean, of course, that debts of the type referred to might not usefully be passed by means of an agreement such as was referred to in paragraph 1 of article 36. His delegation was unable to support the Italian amendment, however, since it presented another difficulty in that it appeared to give a predetermined direction to the content of any agreement.

61. Article 36, as proposed by the International Law Commission, appeared to his delegation to provide a reasonable balance between the interests of the newly independent State and the predecessor State. Moreover, the precedents mentioned in the Commission's commentary proved that intransmissibility of debts had not in the past been an obstacle to just solutions being agreed between such countries. Article 36 in fact represented the shared wish of States to turn over the page of past history and introduce a new era of co-operation. For its part, during the decolonization process, Algeria had insisted on the question of debts being fairly negotiated and it could not be less demanding for other newly independent States and for the development of international law.

62. Mr. KOLOMA (Mozambique) said that, while his delegation appreciated the concern underlying the Italian amendment to article 36, it felt that the question of debts relating to public works was not a matter to be dealt with in an agreement such as was referred to in paragraph 1 of article 36. It also objected to the implication in the Italian amendment that public works in the territory of the newly independent State which were at the time of independence in the process of execution should necessarily be continued after independence. In his delegation's view, their continuation was a matter for the newly independent State to decide. Furthermore, the Italian amendment appeared to impose the duty of passing certain "other debts" to the newly independent State while at the same time subordinating such action to the hypothetical agreement. The amendment appeared therefore to introduce a contradiction into the article. The International Law Commission's draft, on the other hand, was quite clear and should be retained.

63. His delegation could not support the Greek amendment for the reasons it had given during the discussion of a similar provision in connection with article 14, paragraph 4 (16th meeting), and article 26, paragraph 7 (27th meeting).

64. Mr. MURAKAMI (Japan) found paragraph 1 of article 36 somewhat ambiguous as to the exact relationship between the agreement to which it referred and the link between the State debt and the property, rights and interests which passed to the newly independent State.

65. His delegation reiterated its view that agreement between the parties concerned should be given the primary role. As to the vague and ambiguous phrase "the link between the State debt", in so far as it involved any element of restriction upon such agreement, his delegation was opposed to it, as it believed that the freedom of the predecessor State and the successor State should not be curtailed in that respect.

66. With regard to paragraph 2, his delegation had the same views and reservations which it had already expressed in respect of similar provisions in earlier articles.

67. His delegation supported the Greek amendment, but opposed the Italian amendment because it amended only paragraph 1, leaving paragraph 2 as it stood.

68. Mr. BRISTOL (Nigeria) said that his delegation supported article 36 as proposed by the International Law Commission, which was similar to articles 14 and 26 already adopted by the Committee, and it was a well-balanced text. The article was predicated on the twin principles of equity and viability. The International Law Commission had sought to protect the viability of the newly independent State by declaring invalid any agreement which violated the universally recognized principle of the permanent sovereignty of every people over its wealth and natural resources. The interest of the predecessor State was protected in paragraph 1, which, as an exception, provided for the possibility of an agreement between the predecessor

State and the newly independent State. In that connection, he referred to the observations he had made at the 14th meeting during the discussion of article 14.

69. Like the representative of Kenya, he opposed the Greek amendment, because it sought to delete the last portion of paragraph 2 of the draft article.

70. He also opposed the Italian amendment, agreeing with those representatives who had felt that the phrase "except those relating to public works in the process of execution" would introduce an exception to the general rule which would be susceptible of very wide interpretation.

71. Mr. KADIRI (Morocco) said that his delegation wholeheartedly supported the text of article 36, which was a masterpiece of balance and precision. Its inclusion in the future convention was fully justified, not only because—contrary to what some delegations had stated—the decolonization process was not yet completed, but also because the problem of succession to State debts was one which invariably subsisted for a long time after political independence was attained.

72. Very rightly, the International Law Commission had adopted the principle of non-transmissibility of State debts. To burden the newly independent State with such debts would mean prolonging its dependence and even denying its sovereign rights. That *tabula rasa* principle was, however, mitigated by the proviso "unless an agreement" which allowed the States concerned to enter into an agreement on the matter. That type of agreement was likely to promote investment and to facilitate the provision of financial assistance by developed countries and by international financial organizations.

73. When entering into such an agreement, a predecessor State must not take advantage of the weakness of the newly independent State. Many of the current problems of newly independent States arose from the debt burden imposed on them by such agreements, often concluded before the attainment of independence.

74. It was, moreover, necessary to expose the myth of the "sovereign equality of States". To be complete, sovereignty needed to be accompanied by economic independence. Agreements which ran counter to that independence did not satisfy the requirements which the existence of the proviso concerning an agreement implied. Hence the necessity of taking into account the financial capacity of the newly independent State. To ignore that reality would not only be prejudicial to the debtor, it would be of no benefit to the creditor either.

75. The article contained in its paragraph 2 a clause safeguarding the principle of permanent sovereignty over natural resources. That safeguard clause was particularly necessary in the case of an agreement between a metropolitan Power and one of its former dependent territories. By introducing it, the International Law Commission had taken the encouraging step of incorporating into its codification and progressive development of international law a principle whose character of *lex leta* was beyond dispute. Any agreement which violated the principle referred to in paragraph 2 should in fact be deemed null and void *ab initio*, if the principle was recognized as a rule of *jus cogens*.

76. His delegation had reservations regarding the Greek amendment because it would have the effect of deleting an essential portion of paragraph 2. Moreover, his delegation felt that it was contemporary international law which must not be incompatible with the principle of permanent sovereignty over an inalienable right to natural resources.

77. His delegation also had doubts regarding the Italian amendment which would introduce an exception likely to weaken the vital rule set forth in paragraph 1. By passing to a newly independent State debts incurred for public works in the process of execution, that amendment ran the risk of prejudicing the legitimate interest of that State, which was unjust.

78. In conclusion, his delegation—like those of India and Kenya—favoured article 36 as it stood.

79. Mr. CONSTANTIN (Romania) said that article 36 was especially important because of its emphasis on the fact that political independence needed to be accompanied by economic independence. The two paragraphs of the article were entirely consistent with that principle since they specified that there was no automatic passing of debts from the predecessor State to the successor State and they safeguarded the principle of permanent sovereignty over natural resources.

80. The International Law Commission's text thus constituted a well-balanced compromise which suitably reflected the body of custom embodied in the General Assembly resolutions and other decisions of the United Nations. His delegation was unable to accept either of the amendments which had been submitted.

81. Mr. RASSOL'KO (Byelorussian Soviet Socialist Republic) said that the rule of non-transmissibility of State debts embodied in paragraph 1 of article 36 and the important safeguard clause in paragraph 2 of the article would serve to protect the fundamental interests of newly independent States. In the light of the decolonization process, it would be totally illegitimate and inadmissible to burden a newly independent State with debts contracted by the former metropolitan Power.

82. Paragraph 2 of the article gave recognition to the all-important principle of the permanent sovereignty of every people over its wealth and natural resources. It strengthened the protection afforded to the newly independent State and must be retained as it stood. Hence his delegation's opposition to the Greek amendment, which would weaken the expression of that principle, in particular by replacing the words "shall not infringe" by the formula "shall pay regard" and by introducing the ambiguous proviso "in accordance with international law". That amendment would also have the effect of eliminating the important reference to agreements whose implementation endangered the fundamental economic equilibria of the newly independent State.

83. His delegation also strongly opposed the Italian amendment which sought to make a whole range of debts automatically transmissible in defiance of the basic rule laid down in paragraph 1 of the article.

84. Mr. BARRERO-STAHL (Mexico) strongly supported article 36 as proposed by the International Law

Commission, paragraph 1 of which laid down the fundamental rule of non-transmissibility of State debts to a newly independent State. His delegation was convinced that, in the absence of such a rule, the burden placed upon that State would be unbearable.

85. With regard to paragraph 2, his delegation believed that every State had the right to develop and make full use of its resources. He drew attention, in that connection, to the Charter of Economic Rights and Duties of States,[1] which stressed the need to base international economic relations on the principle of reparation for the injustices which deprived a nation of the national resources necessary for its normal development.

86. Mr. BEN SOLTANE (Tunisia) said that the non-transmissibility rule embodied in paragraph 1 of article 36 took account of the State practice which had led to the adoption of the Programme of Action on the Establishment of a New International Economic Order.[2]

87. Paragraph 2 of the article merely reaffirmed a safeguard clause already contained in Parts II and III of the draft convention. It acknowledged the well-known principle of permanent sovereignty over wealth and natural resources and added an additional safeguard concerning the fundamental economic equilibria of the newly independent State. Both of the safeguards were essential, for without them certain agreements might jeopardize the economic future and even the viability of the newly independent State.

88. The Italian amendment would introduce a very broad exception to the non-transmissibility rule contained in paragraph 1. The concept of "public works in the process of execution" was much too extensive in scope; it could cover a broad range of economic activities of the newly independent State and hence hinder its development efforts. Moreover, the public works in question could well be of no interest to the newly independent State, or even be detrimental to its economic development.

89. The Greek amendment expressed more clearly the principle set forth in paragraph 2 but had the shortcoming of eliminating the essential reference to agreements whose implementation endangered the fundamental economic equilibria of the newly independent State. The elimination of that essential corollary to the principle of permanent sovereignty over natural resources would deprive that principle of its substance.

90. For those reasons, his delegation opposed both of the amendments and supported article 36 as it stood.

91. Mr. BEDJAOUI (Expert Consultant) explained that the International Law Commission's reasons for adopting article 36 were similar to those which had led to its adoption of articles 14 and 26.

92. It was true that the Commission had adopted a special approach in dealing with the question of newly independent States, but he would not say that it constituted a more favourable treatment. It certainly was not exceptional treatment.

93. History was there to show that, even outside the realm of State succession, there had been many cases where State debts had been the subject of special treatment (moratoria, renegotiation of a debt, cancellation of part of a debt, etc.). In providing for such treatment, the parties concerned had taken into account problems such as those dealt with in article 36.

94. There was thus nothing new in taking into account a State's capacity to pay. The concept of "fundamental economic equilibria" had not originated in the work of the International Law Commission, which had taken it from a number of international treaties concluded between the two World Wars. Far from being vague, as had been suggested, it was drawn from international practice.

95. The Italian amendment had the drawback of providing for the burdening of the newly independent State with an unduly large volume of debts which might well have been contracted in connection with works serving interests (military or strategic in some cases) of the predecessor State. Such a solution would be contrary to all equity, since it would ignore the newly independent State's interests and its very sovereignty.

96. The suggestion to introduce the words "in particular" between the words "in view" and the phrase "of the link between the State . . ." would alter fundamentally the effect of the article by broadening the scope of the debts that would become transmissible, so that they might include some bearing no relation to the newly independent State.

97. It had been feared by some delegations that the non-transmissibility rule in paragraph 1 would have the effect of discouraging newly independent States from concluding agreements on the subject of State debts. In fact, international life provided many examples to allay such fear. There were numerous reasons why a newly independent State might wish to settle by agreement the problems arising from State debts and other legacies of past relations with the predecessor State. Article 36 as it stood did not rule out that type of agreement; it merely stated the rule of non-transmissibility where no agreement was voluntarily reached.

The meeting rose at 1 p.m.

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[1] General Assembly resolution 3281 (XXIX).

[2] General Assembly resolution 3202 (S-VI).

37th meeting

Monday, 28 March 1983, at 3.15 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 36 (Newly independent State) (*concluded*)

1. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation accepted the idea behind the International Law Commission's draft article that a special régime should be applicable to State debts in cases where the successor State was a newly independent State. That régime would in principle favour the newly independent State. Nevertheless, it considered that the article as drafted might well create more problems than it solved, as other delegations had also pointed out.

2. The discussion had largely reflected the experience of the States represented at the Conference rather than future possibilities. Some 65 delegations represented States which, in principle, could never become newly independent States but might well become predecessor States or, in any case, third States.

3. Seen in that light, article 36 was one of the less important articles of the convention compared with, say, articles 35, 37, 38 and 39. Serious consideration should therefore be given to the appeals for compromise that had been made, in particular those of Switzerland and Austria. A majority vote would not help the Conference to progress.

4. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation was surprised at the sharp division of opinion expressed during the debate on article 36, since paragraph (2) of the commentary clearly indicated that the provision regulated a distinct type of succession of States and should be considered as an exception to the general rule on succession. The distinction was linked with the process of decolonization which, by definition, meant that the two entities involved were *de jure* and *de facto* on an unequal footing. Nobody had objected to that premise. The International Law Commission's text was an attempt to remedy the legal and factual inequality.

5. One delegation had mentioned that decolonization was always a process of divorce between poor and rich, defined in terms of a State's level of economic development and not in terms of the existence or lack of natural resources. That argument in fact justified the approach adopted by the International Law Commission.

6. The text of article 36 was inspired by the world community's universally supported efforts to abolish colonial domination and create favourable conditions for the development of each nation on the basis of the principles of equality and sovereign independence. His delegation therefore approved of the general rule in article 36 that no State debt of the predecessor State should pass to the newly independent State.

7. The idea of granting a more favourable régime to a newly independent State had met with two kinds of objections. The first was based on the alleged need for balanced compromise in the text itself; he emphasized that his delegation had not been convinced of the need for such a balance. It was not clear which debts assumed by the predecessor State—a colonial Power—should pass to the newly independent State without its agreement and who as a creditor would accept such a passage. The passage of State property and State archives was assumed by the successor State, but in that case no third party would be affected.

8. The second category of objections was based on the argument that, by providing for different régimes, the Conference would be exceeding the process of codifying international law and that the International Law Commission's aim was the progressive development of international law. His delegation found it hard to understand why that should be considered as a defect.

9. The law of decolonization in respect of the succession of States from the point of view of a predecessor State was a contractual law reflecting the experience of former colonial Powers and not that of the majority of States represented at the Conference. His delegation agreed that there was no rule of *jus cogens* in that matter, which was why the International Law Commission had treated the particular case as a distinct type of succession of States likely to occur only in future colonial situations. The process of decolonization in itself was independent of the legal régime governing the passage of State debts to the newly independent State. Accession to independence by a State could not be subject to the acceptance by a colonial Power of the conventional régime of succession of States which the Conference was trying to establish.

10. His delegation did not see the connection between the viability of the convention and the process of decolonization. Since agreement on the passing of State debts would be the exception to the rule, but not necessarily the exception to the actual process of succession of States, it had difficulty in supporting any amendment emphasizing the exception and transforming it into a rule. Accordingly it supported the article as proposed by the International Law Commission.

11. Mr. GÜNEY (Turkey) said that his delegation was prepared to accept the rule providing a special régime for newly independent States in respect of the transmissibility of State debts. Article 36 as it stood was well-balanced and did not go beyond the idea of offering reasonable protection to newly independent States.

12. The International Law Commission had decided to adopt as a basic rule the non-transmissibility of debts from the predecessor State to the newly independent successor State but did not rule out the possibility of a

valid, freely concluded agreement between such States in the matter of State debts, on condition that there was a link between the debt connected with the activity of the predecessor State in the territory to which the succession of States related, and the property, rights and interests which passed to the newly independent State. Those two conditions had the advantage of encouraging the conclusion of agreements.

13. Paragraph 2 of article 36 met the concern of newly independent States. His delegation endorsed the point made in paragraph (39) of the commentary that international law could not be codified or progressively developed in isolation from the contemporary economic and political context.

14. His delegation had no difficulty in accepting article 36 as drafted by the International Law Commission.

15. Mr. NDIAYE (Senegal) said that his delegation was in favour of the text of article 36 as it stood. It did not require the predecessor State to be excessively generous to the successor State. Admittedly, the article stated, first, the principle of the non-transmissibility of debts from the predecessor to the newly independent successor State, but then it proceeded to provide for an exception to the principle if there was a link between the debts connected with the activity of the predecessor State in the territory in question and the property, rights and interests which passed to the successor State. Surely it was hardly conceivable that any other debts than those referred to could be transmitted. The predecessor State in such cases would inevitably be a colonial Power, and hence it was proper to require a link of the kind mentioned in the article. Without the safeguard clause stipulating such a link, the economic viability of the newly independent successor State would be gravely prejudiced.

16. The Italian delegation's amendment (A/CONF. 117/C.1/L.52) was designed to give priority treatment to debts relating to public works; in the opinion of the Senegalese delegation the priority was not justified. Public works were not always easy to define or of benefit to the successor State. In any case, the provision concerning a link between State debts and activity in a given territory was applicable equally to debts arising out of the execution of public works. The International Law Commission's draft would apply to all State debts where such a link existed.

17. It had been argued that certain expressions used in paragraph 2 were not of a strictly juridical nature. In reply to that argument he said that the expressions in question were perfectly familiar to practitioners and undoubtedly carried a precise objective meaning.

18. Mr. ECONOMIDES (Greece) thanked those who had supported his delegation's amendment (A/CONF.117/C.1/L.51). He wished to make it quite clear that his delegation accepted the idea of a special régime for a newly independent State in the case of a succession of States, particularly where State debts were concerned; and also that it believed that permanent sovereignty over natural resources was part of the international legal order.

19. With respect to the objections raised to his delegation's amendment, some speakers had mentioned that it was similar to the Netherlands amendment to paragraph 4 of article 14 (A/CONF.117/C.1/L.18) and open to the same objections as had been mentioned in the earlier discussion.

20. He pointed out that there were considerable differences between the two amendments, as several other speakers, including the representative of Tunisia (14th meeting), had noted. The Greek amendment was in fact identical to the first part of paragraph 2 of the International Law Commission's text, except that it replaced the words "shall not infringe the principle" by "shall pay regard to the principle", and added the words "in accordance with international law" at the end of the sentence. His delegation considered the latter words to be essential, for they would constitute a common denominator for the acceptance of the principle in question.

21. It considered the argument that international law should conform to the principle of permanent sovereignty over natural resources to be somewhat reminiscent of certain contentious arguments advanced before the Second World War with regard to the so-called "imperative of vital space".

22. There was no basis for the argument that the Greek amendment to article 36 would weaken the principle of *jus cogens* set forth therein. A rule of *jus cogens* could not be created using a set formula. Even an international convention could not engender such a rule; it always had to be derived from international custom recognized by the international community as a whole.

23. In reply to the arguments against his delegation's proposal that the final phrase of paragraph 2 of the International Law Commission's text should be omitted, he said that article 36 already provided sufficient, even excessive, protection for newly independent States and the phrase in question was not therefore indispensable. In that respect, he agreed with the comments of the representatives of Canada and Switzerland at the previous meeting.

24. Mr. MOCHI ONORY DI SALUZZO (Italy) said that his delegation's amendment to article 36 was intended to make an improvement and provide a compromise solution to some of the problems arising from the article for the many delegations which, like his own, felt that the provisions of article 36 as drafted by the International Law Commission could represent a development of international law but were certainly not a codification of existing international law. However, in view of the opposition which the amendment had met in the Committee, he had decided to withdraw it. In doing so, he wished to make it clear that his delegation's concern to improve the article should on no account be construed, even *a contrario*, as acceptance of the text thereof.

25. The CHAIRMAN noted that the Italian delegation's amendment had been withdrawn and invited the Committee to vote on the Greek delegation's amendment.

The amendment was rejected by 33 votes to 21, with 3 abstentions.

Article 36 as proposed by the International Law Commission was adopted by 39 votes to 21 and referred to the Drafting Committee.

26. Mr. PIRIS (France), speaking in explanation of vote, said that his delegation had voted in favour of the Greek amendment and against the International Law Commission's draft for reasons explained in the course of the discussion on article 36 (36th meeting). He noted that, once again, no account had been taken of the views of a large minority of the States represented at the Conference and that, in spite of numerous appeals to the contrary, the Committee had continued, by majority vote, to adopt the International Law Commission's draft, article by article, without any attempt at negotiation or compromise.

27. Replying to the delegation which had cited paragraphs (32) to (37) of the commentary to article 36, he said that those paragraphs reflected the views of only one party to a succession of States and not those of the other.

28. Mr. MONNIER (Switzerland) said that, by listing numerous conditions of very wide scope which agreements between the predecessor State and the successor State had to satisfy in respect of the passing of debts, article 36 gave rise to legal difficulties. Those conditions, whose effect was practically to paralyse the contractual freedom of the States concerned, were not likely to encourage States to settle the matter by agreement, a result contrary to what he gathered was the International Law Commission's intention that they should be encouraged to do so.

29. Moreover, he could not agree to the principle of the permanent sovereignty of every people over its wealth and natural resources being presented or interpreted as a standard of the law of nations. Article 36 thus gave rise to fundamental objections of the same nature as articles 14, 26, 28 and 29, and he had therefore voted against it although, in principle, he considered a special régime for newly independent States in respect of State debts to be justified.

30. Mr. BROWN (Australia) said that his delegation had voted against article 36 because the expression "fundamental economic equilibria" in paragraph 2 was so uncertain of meaning that it made possible applications unacceptably wide.

31. Mr. KIRSCH (Canada) said that, although he agreed that special treatment in respect of the passing of State debts should be given to newly independent States, he had voted against article 36.

32. For reasons stated in connection with article 14 as well as in the discussion on article 36, the inclusion of a binding rule subordinating an agreement between States to recognition of the principle of sovereignty over wealth and natural resources was not acceptable to his delegation. Furthermore, the legal scope of the article and the precise meaning of several of the expressions employed remained unclear, and numerous requests for an explanation of their import had remained unanswered. Nor had he received a reply to the question which he had asked at the previous meeting, namely, what in article 36 could encourage a predecessor State succeeded by a newly independent State to become a party to the proposed convention rather than to proceed on the basis of general international law. In the absence of an answer to that question, he had been obliged to conclude that the alleged balance in article 36 was purely theoretical.

33. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation had supported without any reservations the article proposed by the International Law Commission, which was designed to harmonize international law with modern political reality.

34. After expressing full agreement with the four conditions which the article stipulated for the validity of the devolution agreement between the newly independent State and the former administering Power in the matter of the passing of State debts, he reiterated the statement he had made in connection with article 14 (16th meeting) to the effect that in his delegation's opinion the expression "newly independent State" meant not only a State that had been legally and institutionally dependent on a colonial Power, but also a newly independent State that had been controlled by a foreign Power and had acquired its sovereignty after the period of dependence.

35. Replying to a question by the representative of Viet Nam, he confirmed that, in his delegation's view, the expression should in future be applied to countries other than those emerging from colonial domination in the traditional sense.

36. Mr. MURAKAMI (Japan) said that he had voted against article 36 because he strongly objected to its paragraph 2.

37. With regard to paragraph 1, he wished to put on record his delegation's understanding that the phrase beginning with the words "in view of the link" did not in any way affect the validity of an agreement concluded between a newly independent State and the predecessor State for which provision was made in that same paragraph.

38. Mr. OLWAEUS (Sweden) said that his delegation had regretfully voted against article 36 for the same reasons, and in the same spirit, as it had opposed articles 14 (16th meeting) and 26 (29th meeting). While having no objection to the general principles underlying those articles, it felt that the legal effects of including such imprecise provisions as those of article 36, paragraph 2, in a multilateral treaty on the succession of States were very doubtful to say the least, especially if they were to be considered peremptory rules of international law.

39. For the same reason, his delegation had voted in favour of the Greek amendment as being a useful compromise which would ultimately have been in the interests of all.

40. Mr. LEITE (Portugal) said that he had voted against article 36 as drafted by the International Law Commission, first, because it reflected an assumption that, in the process of succession, the predecessor State always took advantage of its superior economic situation to the detriment of the interests of the newly independent State, an assumption which Portugal knew from experience to be untrue and could not accept. Second, as his own delegation and others had explained in connection with articles 14, paragraph 4, and 26, paragraph 4, the provisions of article 36 were not in keeping with general practice and with many principles

of international law. He expressed the hope that the Conference would pay attention to the warnings about the value of the future convention voiced by the representatives of Canada and the Netherlands.

41. Mr. ECONOMIDES (Greece) said that he had regretfully voted against article 36 for the same reasons as he had opposed article 14 (16th meeting). Moreover, the new principles set forth in paragraph 2 of article 36, although designed to offer additional guarantees to newly independent States, were likely instead to cause serious confusion.

42. Mr. OESTERHELT (Federal Republic of Germany) said that, for reasons explained earlier in the debate (36th meeting), he had voted in favour of the Greek amendment and, after that amendment had been defeated, against the article as a whole. He regretted that no answer had been forthcoming to his questions concerning the juridical consequences flowing from the formulations appearing in both paragraphs of the article.

43. Mr. LAMAMRA (Algeria) said that he had voted in favour of the International Law Commission's draft and, with great regret, against the Greek amendment. For reasons already stated (36th meeting), his delegation attached particular importance to the reference to the fundamental economic equilibria of the newly independent State. Referring once more to paragraphs (32) to (37) of the commentary to article 36, he welcomed the attention given by the International Law Commission to his country's experience in the matter of succession to State debts.

44. Mr. SKIBSTED (Denmark) said that he had voted against article 36 for the same reasons for which he had opposed articles 14 and 26, and had voted in favour of the Greek amendment as being a useful compromise text.

45. Mr. BEDJAOUI (Expert Consultant) said that members of the Committee were, of course, entitled to be dissatisfied or disappointed with the explanations he had supplied. For his part, he had endeavoured to answer to the best of his ability every point concerning the work of the International Law Commission on the subject under discussion.

Article 37 (Uniting of States)

46. Mr. MIKULKA (Czechoslovakia) inquired why the International Law Commission had omitted from article 37 a paragraph corresponding to paragraph 2 of the similar articles 15 and 27.

47. Mr. BEDJAOUI (Expert Consultant) said that the International Law Commission had considered the legal position with regard to State debts to be sufficiently different from that with regard to State property and State archives to warrant the omission of such a paragraph. He added in that connection that articles 15 and 27 had been referred to the Drafting Committee with a request for a recommendation on the desirability of retaining or deleting paragraph 2 of those articles (see documents A/CONF.117/DC.4 and DC.11).

48. The CHAIRMAN said that, unless he heard any objections, he would take it that the Committee wished to adopt article 37 without a vote.

Article 37 was adopted without a vote and referred to the Drafting Committee.

Article 38 (Separation of part or parts of the territory of a State)

49. Mr. RASUL (Pakistan) said that his delegation had decided to withdraw its proposed amendment to article 38 (A/CONF.117/C.1/L.14) with a view to expediting the Committee's work. However, he would be grateful if the Expert Consultant would explain the reasons behind the use in paragraph 1 of article 38 of criteria for determining "equitable proportion", which differed from those referred to in paragraph 2 of article 35.

50. His delegation would also wish to make a statement after a decision had been taken on the article.

51. Mr. BEDJAOUI (Expert Consultant), in reply to the delegation of Pakistan, referred to his earlier explanations regarding the International Law Commission's view of the distinction between cases of succession arising from the transfer of a part of a territory and those involving a separation of territory.

52. Mrs. THAKORE (India) said that her delegation fully subscribed to article 38 as drafted. The fundamental rule laid down in paragraph 1 reflected State practice, as noted in the International Law Commission's commentary to article 38, particularly paragraphs (24) to (27) thereof, and thus had naturally not given rise to criticism in the Sixth Committee or in the written comments provided by governments. The only concern which had been expressed was that the reference to agreement between the predecessor State and the successor State might give the impression that the article authorized a derogation from the principle of equitable apportionment of debts.

53. Mr. ECONOMIDES (Greece) said that it was regrettable that articles 38 and 39, unlike articles 35 and 36, made no reference to any form of objective criteria for determining "equitable proportion". That omission left the notion of equity quite formless and indefinite and, in his delegation's view, vitiated the provisions in question.

54. Mr. NATHAN (Israel) said that he also found the expression "equitable proportion" excessively vague and likely to lead to disputes over its interpretation. He saw no compelling reason why article 35 should give some indication of criteria to be considered in determining that proportion while none whatsoever was mentioned in article 38.

55. The essential criterion should be the extent of the benefit derived by the successor State. From that proposition two conclusions followed: localized debts, those specifically attached to the territory concerned, should pass to the successor State in their entirety, whereas the public general debt of the predecessor State should be apportioned in conformity with criteria which accorded due weight to the extent of State property passing to the successor State.

56. Mr. PIRIS (France) noted that his delegation had already commented fully on the issues arising from article 38. He concurred with other speakers in finding the difference in wording between article 38, para-

graph 1 and article 35, paragraph 2, inexplicable. His delegation would prefer the final passage of paragraph 1 of article 38 to read "taking into account, *inter alia*, the property, rights and interests which pass to the successor State in relation to that State debt", thus making it identical to the passage at the end of paragraph 2 of article 35.

57. Mr. HAWAS (Egypt) said that the Committee of the Whole had discussed at considerable length the several differences between cases involving transfer of territory, dealt with in article 35, and those arising from a separation of territory, which were the subject matter of article 38. His delegation endorsed article 38 as it stood, believing that the criteria established by that article were adequate and more appropriate in that context than those used in article 35.

58. Mr. JOMARD (Iraq) supported the suggestion made by the representative of France that the words "taking into account all relevant circumstances" should be deleted and replaced by the wording used at the end of paragraph 2 of article 35.

59. Mr. MONNIER (Switzerland) said that his delegation's serious doubts regarding the subtle distinction apparently drawn between situations involving a transfer and those arising from a separation of territory were reinforced by the language used in paragraph 1 of article 38. In seeking to find a formulation different from that used in paragraph 1 of article 35, the International Law Commission had encountered difficulties both of drafting and of substance. By its very vague and general nature, the phrase "taking into account all relevant circumstances" was likely to create more problems than it resolved.

60. Mr. BEDJAOUI (Expert Consultant), referring to the criticisms of article 38 voiced by the representative of Pakistan, said that the article did not in any way exclude the possibility of using the same approach for the purpose of determining "equitable proportion" as in article 35; nowhere was it stated that the factors referred to in paragraph 2 of article 35 should not be taken into account.

61. In the case of a transfer of territory, the situation was clear-cut and was governed by agreement between the States concerned, whereas cases of separations of territory constituted a much broader and more disparate category. That was why article 38 had been drafted in flexible terms so as to cover all possible circumstances and factors, among which the property, rights and interests passing to the successor State might readily be included.

62. Mr. PIRIS (France) thanked the Expert Consultant for his explanation but regretted that he did not find it satisfactory. His delegation continued to believe that the words "all relevant circumstances" in a binding legal text were far too vague.

63. He formally proposed that, in the event of a vote being taken on article 38, a vote should first be taken on the following amendment: the deletion of the words "all relevant circumstances" and the substitution for those words of the phrase "*inter alia*, the property rights and interests which pass to the successor State in relation to that State debt".

64. Mr. JOMARD (Iraq) seconded that proposal.

65. The CHAIRMAN invited the Committee to vote on the amendment to article 38 proposed orally by France and seconded by Iraq.

The amendment was adopted by 29 votes to 9, with 26 abstentions.

66. Mr. HAWAS (Egypt) said that he had voted twice in error, both for and against, because he had at first been under the impression that the voting related to article 38 itself. He had intended to vote against the French delegation's amendment.

67. Mr. NDIAYE (Senegal), speaking in explanation of vote, said that he had voted against the French amendment. Neither the amendment nor the text of article 38 itself was satisfactory. It would have been better to retain the words "all relevant circumstances" and then to append the French amendment. The combined form would then have covered all possible factors.

68. The CHAIRMAN invited the Committee to vote on article 38 as amended.

Article 38, as amended, was adopted by 60 votes to none, with 2 abstentions, and referred to the Drafting Committee.

69. The CHAIRMAN said that a number of delegations wished to explain their votes.

70. Mr. RASUL (Pakistan) said that his delegation had originally proposed in its amendment that the words "in an equitable proportion" should be deleted, for the reasons it had explained in connection with its amendment to article 35 (35th meeting). The second part of his delegation's amendment (the phrase beginning "*inter alia*"), which had just been adopted, was necessary from the point of view of drafting. His delegation had voted for the article as amended, since the principles it embodied were acceptable, but it continued to oppose the words "in an equitable proportion" as they would impede the settlement of disputes between States involved in a succession.

71. Mr. SUCHARITKUL (Thailand) and Mr. BEN SOLTANE (Tunisia) said that their delegations did not consider that the French delegation's amendment altered the substance of the article submitted by the International Law Commission; they had therefore abstained in the voting on the amendment, but had voted in favour of the article as amended.

72. Mr. MURAKAMI (Japan) said that the fact that his delegation had voted in favour of article 38, as amended, should not be taken as implying approval of the criterion of "equitable proportion" used in paragraph 1, which was too vague to permit of objective interpretation.

73. Mr. ECONOMIDES (Greece) said that his delegation had voted for the French delegation's amendment and for the article as amended. The reference to "equitable proportion" was most appropriate in the context of article 38, while the expression "*inter alia*" meant that other criteria, such as size of population, extent of territory and natural resources, could also be taken into account.

74. Mr. HAWAS (Egypt) said that his delegation had voted against the French amendment but in favour of the article as amended. It felt, however, that the original wording would have been preferable.

75. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had voted for the French delegation's amendment and for the article, as amended, although it did not see any compelling reason for employing the same formula in article 38 as in article 35. From the points of view of both substance and drafting, such a solution seemed questionable. His delegation also felt that article 38, like other articles in Part IV, was closely related to the general provisions in Part I, which had not yet been discussed.

76. His delegation's position would ultimately be governed by the way in which other articles in Part IV, particularly those containing provisions protecting the interests of third States, would be dealt with. Subject to that proviso, his delegation had voted in favour of the text as amended.

77. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation had voted against the French delegation's amendment because it considered that in paragraph 1 of article 38 allowance should be made not only for the factors referred to in that amendment but also for others, such as size of population, extent of territory and natural resources. All those factors would have been adequately covered by the wording proposed by the International Law Commission.

78. Mr. LAMAMRA (Algeria) said that his delegation had felt itself obliged to oppose the French amendment because it was not convinced that it was appropriate to transplant the wording used in article 35 to the different context of article 38. However, it had voted in favour of the article as a whole on the grounds that the wording adopted would not imply that "all relevant circumstances" would not be taken into account.

Article 39 (Dissolution of a State)

79. Mr. RASUL (Pakistan) said that, in a spirit of compromise, his delegation was prepared to withdraw its amendment to article 39 (A/CONF.117/C.1/L.15). He proposed, however, that the wording just adopted in respect of article 38 should be incorporated into article 39, which would thus read: "taking into account, *inter alia*, the property, rights and interests which pass to the successor State in relation to that State debt."

80. Mr. JOMARD (Iraq) said that, while the circumstances envisaged in article 38 were well defined, those attending the dissolution of a State, as in article 39, were more complex and would require a less restrictive wording. For that reason, his delegation favoured the text of the article as it stood.

81. Mr. PIRIS (France) and Mr. GÜNEY (Turkey) said that their delegations supported the amendment proposed orally by Pakistan.

82. Mr. RASUL (Pakistan) said that, while grateful for the support his oral amendment had received, he would not press for a vote on it since the representative of Iraq had indicated that there might be a substantive difference between the situations covered by articles 38 and 39, respectively.

83. Mr. BEDJAOUI (Expert Consultant) said that the oral amendment proposed by Pakistan might, if approved, have the effect of eliminating the important principle of equity in article 39. In the case of the dissolution of a State the predecessor State disappeared, an event which gave rise to a host of problems quite distinct from those which arose on the separation of part or parts of a State's territory. In his opinion it would be unwise to try to establish too close a formal correspondence between articles 38 and 39.

84. Mr. ECONOMIDES (Greece) said that the Expert Consultant had indicated that articles 38 and 39 dealt with different situations. The Greek delegation wished to point out, however, that the International Law Commission had drafted both articles in virtually identical terms. In view of the fact that the Committee of the Whole had adopted article 38 as orally amended by France, the most suitable course might be to incorporate the relevant wording in article 39 but to ask the Drafting Committee to consider whether it was in fact appropriate to use that wording.

85. Mrs. OLIVEROS (Argentina) said that it would not be correct to ask the Drafting Committee to incorporate certain changes in a draft article when the Committee of the Whole had not itself taken a decision on those changes.

86. Mr. GÜNEY (Turkey) and Mr. COUTINHO (Brazil) said that they agreed with the representative of Argentina.

87. Mr. TEPAVITCHAROV (Bulgaria) said that the proposed amendment involved more than a mere drafting point and that the Committee of the Whole should take a decision on article 39 as proposed by the International Law Commission.

88. Mr. MUCHUI (Kenya) said that he agreed with the representative of Bulgaria. He was not convinced by the argument that the French delegation's oral amendment adopted with respect to article 38 should automatically be incorporated in article 39. The situation envisaged in the latter article was, as had been pointed out, more complex than that covered by article 38.

89. Mr. OESTERHELT (Federal Republic of Germany) said that in the case of the dissolution of a State, all property, and also debts, must be apportioned equitably, and that it would therefore be appropriate to incorporate in article 39 the amendment already adopted in the case of articles 35 and 38.

90. Mr. MONNIER (Switzerland), agreeing with the previous speaker, said that the important element in article 39 was not the disappearance of the State in a case of dissolution but the fact that State debts, like property rights and interests, passed to the successor States in equitable proportions. In such a context the phrase "all relevant circumstances" was much too vague to be of use.

91. Although the representative of Pakistan had said that he would not press for a vote on his oral amendment, the Swiss delegation considered that the issue was an important one and that the Committee should take a decision on it.

92. **Mr. NDIAYE** (Senegal) said that he had abstained in the voting on the oral amendment to article 38, but that he would not object if similar wording were included in article 39.

93. The **CHAIRMAN** invited the Committee to vote on the oral amendment to the effect that the words "all relevant circumstances" should be replaced by the phrase "*inter alia*, the property, rights and interests which pass to the successor State in relation to that State debt".

The amendment was adopted by 25 votes to 17, with 20 abstentions.

94. The **CHAIRMAN** invited the Committee to vote on article 39 as a whole, as orally amended.

Article 39, as orally amended, was adopted by 62 votes to none, with 2 abstentions, and referred to the Drafting Committee.

95. The **CHAIRMAN** said that a number of delegations wished to explain their votes.

96. **Mr. HAWAS** (Egypt) said that his delegation had voted against the amendment for the same reasons that had led it to vote against the French amendment to article 38. However, although it preferred the original text submitted by the International Law Commission, it had voted in favour of article 39 as a whole as amended.

97. **Mr. A. BIN DAAR** (United Arab Emirates) said that his delegation had abstained in the voting on the amendment, which it regarded as unnecessary. However, it had voted in favour of article 39, as amended, believing that the amendment would not affect the substance of the article as drafted by the International Law Commission.

98. **Mr. MURAKAMI** (Japan) said that his delegation had the same doubts about the phrase "in equitable proportion" as it had expressed with respect to the analogous phrase in article 38. It had nevertheless voted for the article as orally amended.

99. **Mr. LEITE** (Portugal) said that his delegation had voted in favour of the oral amendment and also for the article as amended. He welcomed the amendment because he believed it was not appropriate to use such vague terms as "equitable proportion" and "all relevant circumstances" without qualification.

100. **Mr. SUCHARITKUL** (Thailand) said that his delegation had abstained in the voting on the oral amendment and had voted for article 39 as amended for the reasons which had guided its voting in connection with article 38.

101. **Mr. ECONOMIDES** (Greece) said that he had voted for both the oral amendment and for article 39 as amended. The acceptance of the amendment would ensure that all pertinent factors would be covered in each particular case.

102. **Mr. SUCHARIPA** (Austria) said that his delegation had some difficulty with the wording of article 39 as adopted; the terms used were so vague that, if applied to specific cases, they might give rise to disputes between States. The oral amendment improved the text to some extent but was still insufficiently precise. However, his delegation had voted in favour of article 39 as amended since it did not seem practical to introduce major changes at the present stage in the Committee's work.

103. **Mr. OESTERHELT** (Federal Republic of Germany) said that his delegation had voted for the oral amendment and for article 39 as amended for the reasons stated in connection with its vote on article 38.

104. **Mr. LAMAMRA** (Algeria) said that he had voted against the oral amendment because he considered it undesirable to place emphasis on the passing of property, rights and interests in the context of article 39. He was also not convinced that it was advisable automatically to re-use a certain wording simply because it had been adopted in a different article. However, his delegation had been able to vote in favour of article 39 as amended because it understood that to stress one factor did not mean the exclusion of others.

105. **Mr. MIKULKA** (Czechoslovakia) said that his delegation had voted against the oral amendment because it overemphasized the property, rights and interests which passed as criteria for the apportionment of the State debt. The dissolution of a State was a very complex case of succession and there were other equally important factors to be considered. His delegation had accordingly abstained in the voting on article 39 as amended, feeling that although the initial text might have been too vague, the amended form, although more precise, was incorrect.

106. **Mr. ZSCHIEDRICH** (German Democratic Republic) said that he had voted against the oral amendment because it gave undue prominence to one specific factor for determining the apportionment of the State debt. However, since a specific reference to the passing of property, rights and interests did not exclude other relevant circumstances, he had been able to vote for article 39 in its amended form.

New article 24 bis (Preservation and safety of State archives) (*continued*)*

107. **Mr. A. BIN DAAR** (United Arab Emirates) announced that his delegation would introduce a revised version of its amendment involving the addition of a new article 24 *bis*.[1]

The meeting rose at 6 p.m.

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* Resumed from the 33rd meeting.

[1] Subsequently issued under the symbol A/CONF.117/C.1/L.50/Rev.1.

38th meeting

Tuesday, 29 March 1983, at 10.40 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 34 (Effects of the passing of State debts with regard to creditors) (*continued*)*

1. The CHAIRMAN invited the Expert Consultant to reply to the questions which had been asked during the previous discussion of article 34.

2. Mr. BEDJAOUI (Expert Consultant) noted that certain delegations had indicated some reluctance to approve article 34, paragraph 2(*a*).

3. He wished to point out, first of all, that it might be the case that neither the predecessor nor the successor State nor the third creditor State were parties to the future convention. In that case, if the third State did not give its consent to any agreement reached between the predecessor State and the successor State in respect of State debts, the principle of *res inter alios acta* would apply; the rights of the creditor third State would not be affected and it would not be bound by the agreement, in conformity with article 34 of the 1969 Vienna Convention on the Law of Treaties,[1] although articles 35 to 38 of that Convention provided for various cases in which treaties did create rights and obligations for third States. Furthermore, general international law recognized that objective situations might be created by an agreement between sovereign States, for example, a treaty relating to waterways. He wondered if the change in the international personality of a State resulting from a succession of States was not such an objective situation.

4. In article 34, paragraph 2(*a*), the International Law Commission had been concerned, not with the agreement between the predecessor State and the successor State, but with any consequences of it which were in conformity with the rules of Part IV of the convention. He was aware that the question as to whether that resulted in the convention, rather than the agreement, being applicable to the third State might give rise to some difficulties. However, the reasoning of the International Law Commission had been that the primary rule of the draft convention was that an agreement should be concluded between the sovereign predecessor and successor States, no requirements being laid down for such agreements, except in the case of newly independent States. If, in making such an agreement, however, the States concerned moderated their respective claims in conformity with the substantive rules laid down by the convention, which would constitute the "common law", as it were, for succession, then in all equity, that should impose an obligation on the creditor third State.

5. From the practical viewpoint, in the triangular State debt relationship, the creditor third party had to be protected, but the International Law Commission regarded it as going too far to allow the third State to exercise a form of veto in relation to the succession; that expression had been used during the discussion of the point in the Commission. It had been considered reasonable to limit that veto so that, under the circumstances envisaged in paragraph 2(*a*), the third State should be required to give its consent to a change of debtor. The object was not, of course, to wipe out the debt but rather to ensure that it survived in the succession of States.

6. If an agreement was concluded between the predecessor and successor States and a provision such as that in paragraph 2(*a*) did not exist, the debt would remain the responsibility of the predecessor State, if the creditor third State did not agree to its passing to the successor State. That would not be equitable to the predecessor State which had transferred part of its territory, for the debt concerned might very well be associated with State property which was passing to the successor State. In the case of a newly independent State, the successor State would be in an advantageous position because it would have an agreement which respected the rules set out in the draft convention and the creditor third State would still hold the predecessor State responsible for the debts.

7. Mr. MURAKAMI (Japan) said that Part IV of the draft convention was of a special nature in that it involved a triangular relationship, whereas Parts II and III dealt mainly with the bilateral relationship between predecessor and successor States. Article 34 was the key article of Part IV, since it established the basic structure of that triangular relationship.

8. His delegation supported paragraph 1 of the draft article, but proposed the deletion of subparagraph (*a*) of paragraph 2: the exact meaning of that subparagraph and its relationship with paragraph 1 were not clear, despite the explanation given by the Expert Consultant. The subparagraph would appear to provide that an agreement between two States could bind a third party without the latter's consent, if the consequences of the agreement in question were in accordance with the provisions of Part IV. That was clearly not in conformity with the principles of general international law concerning agreements and their effects on third parties embodied, for example, in articles 34 to 38 of the 1969 Vienna Convention on the Law of Treaties.

9. Subparagraph (*a*) of paragraph 2 did not, of course, codify an existing rule of general international law. It laid down a new rule of a purely contractual nature;

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* Resumed from the 35th meeting.

[1] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

and, as between the parties to the future convention, the consent of the creditor State was secured when that State became a party to the convention and thus expressed its consent to be bound by the subparagraph.

10. The draft convention, however, also aimed at contributing to the progressive development of international law. For that purpose, it needed to be rational, realistic and flexible, and to pay due regard to the importance of the agreement of the parties involved, as well as to such principles as good faith, sovereign equality of States and self-determination of peoples. It was equally important to bear in mind the need to maintain legal order in the international community.

11. In matters of State succession, the consent of the parties concerned was of primary importance. In Part IV, that meant that the consent of the creditors must be ensured. His delegation considered that the draft convention should conform with the existing principles of general international law as far as possible, rather than introduce a new rule such as that proposed in article 34.

12. Another problem to be solved was that of the relationship between paragraph 2 of article 34 and article 12, which provided that a succession of States should not as such affect property, rights and interests owned by a third State. That provision apparently covered a debt claim by a third State towards the predecessor State.

13. His delegation had welcomed article 12 as a declaratory provision, and it now asked the Expert Consultant for his view as to whether article 34, paragraph 2, had some effect on article 12, and if so, what effect.

14. Mr. ROSENSTOCK (United States of America) said that he was convinced that something had gone wrong with the drafting of subparagraph (*a*), although the intention of its authors might well have been commendable.

15. If paragraph 1 did not govern paragraph 2, then the two were simply inconsistent. It was of no use imagining theoretical constructs. The case of dissolution of a State was covered by article 39 but the rule therein could not apply in other cases. The creditor third State had the right to retain its entitlement to repayment unaffected, in conformity with the rule both of law and of common sense. The predecessor and successor States could conclude an agreement between themselves. However, as far as the third State was concerned, the responsibility for repayment remained with the predecessor State. In effect, the creditor State did have a veto right. The best solution, therefore, would be to delete paragraph 2. A difficulty would arise only in the event of failure to repay the debt. In that case, the creditor State would fall back on the principle of *res inter alios acta*.

16. If there was nevertheless a strong desire to include in the convention some provision on the question, then a formulation might be adopted to the effect that nothing prevented the predecessor State and sovereign States from agreeing as between themselves on the allocation of State debts.

17. Mr. BEDJAOUI (Expert Consultant) said that he saw no need to refer to article 12. The International Law Commission had intended article 34 as a safeguard clause to protect the rights of creditors. However, some members of the Commission had wanted paragraph 1 to be slightly modified by means of paragraph 2. The Committee of the Whole could decide, if it so wished, to delete the whole of paragraph 2, without harming the article. The International Law Commission had formulated subparagraph (*a*) in order to preclude the right of veto.

18. Mr. KEROUAZ (Algeria) said that article 34 as proposed by the International Law Commission was in conformity with State practice; customary international law did not compel a successor State to assume the debts of the predecessor State.

19. In many cases, the rights and obligations of creditors were regulated by means of an agreement between the predecessor State and the successor State. Article 34 provided that such agreements could be invoked by the predecessor or the successor State only if they were in conformity with the provisions of Part IV of the draft convention or if they had been accepted by the third State or States. In subparagraph (*a*), the Commission had provided for the case of agreements between predecessor and successor States which might not be in accordance with the provisions of Part IV of the draft convention, and in particular with article 36, which was closely related to article 34, in its turn linked to articles 14 and 26.

20. His delegation considered those provisions to be the backbone of the draft convention. Agreements which were not in accordance with those provisions, whether or not they were governed by the general rules of international law, would automatically have illegal consequences. The International Law Commission, in its wisdom, had excluded the possibility of their being invoked against a third creditor State, unless one of the two conditions set out in subparagraphs (*a*) and (*b*) of paragraph 2 had been met. In subparagraph (*b*) the International Law Commission had foreseen the classic case of a third creditor State which had given its express or tacit consent to an agreement relating to the passing of State debts. If that consent had not been given, for any reason, it was only fair that the agreement between the predecessor State and the successor State should not be applicable to the third creditor State or States.

21. His delegation considered article 34 satisfactory as it stood, but, in a constructive spirit, it was prepared to agree to the proposal made during informal consultations to combine articles 32 and 34.

22. Mr. EDWARDS (United Kingdom) said that the Expert Consultant's explanation had not dispelled the concerns of a technical nature which his delegation had expressed at the 35th meeting. The two conditions for the invoking of agreements against a third State, as set out in subparagraphs (*a*) and (*b*) of paragraph 2, contradicted one another, quite apart from having unacceptable legal consequences.

23. His delegation would be happy to see paragraph 2 deleted altogether. Alternatively, subparagraph (*a*) could be deleted, or, as his delegation had suggested earlier, subparagraphs (*a*) and (*b*) could be linked with the word "and" instead of the word "or". He re-

iterated that his delegation's concerns were of a technical and legal, and not of a political, nature.

24. Mr. RASUL (Pakistan) said that the explanation given by the Expert Consultant had fully dispelled his delegation's concerns in respect of subparagraph (*a*). His delegation therefore withdrew its amendment submitted in document A/CONF.117/C.1/L.12.

25. Mr. KIRSCH (Canada) said that, although the Expert Consultant had given a thorough explanation of a number of problems arising from article 34, there were a number of points which, to his delegation, were still unclear. The first of those points related to the parties against which the provisions of subparagraph (*a*) of paragraph 2 could be invoked. In his delegation's view, under the rules of international law, they could not be invoked against a creditor third State. If, instead of States which were not parties to the future convention, the International Law Commission had had in mind States parties which were able to accept an agreement implicitly, that should, from a drafting standpoint, have been stated expressly in the draft article. From the point of view of substance, however, that caused serious difficulties for his delegation. Furthermore, as the representative of Hungary had pointed out (35th meeting), it was difficult to see how the provisions of subparagraph (*a*) could apply to an international organization or other subject of international law.

26. The second point concerned the precise implications of the requirement of conformity with the other provisions of Part IV. There were two possibilities. The first was the case where an agreement had already been concluded between a predecessor State and a successor State, as provided in the opening clauses of most of the articles in the draft convention. Except in the case of newly independent States, no restrictions were placed on such agreements. The only agreements that could therefore be envisaged by subparagraph (*a*) were those relating to newly independent States, which must by definition be in accordance with Part IV of the draft convention. It was therefore difficult to see what subparagraph (*a*) added to the draft convention. The second possibility was the case where an agreement had been concluded because of the existence of a third party, which would be subject to other rules. The possible implication was that such an agreement would be subject not only to the rules of international law, but also to certain other rules referred to elsewhere in the draft convention.

27. His delegation would welcome clarification on those points.

28. Mr. PÉREZ GIRALDA (Spain) said that paragraph 2 of article 34 provided quite clearly that an agreement on the passing of State debts concluded between a predecessor and a successor State could, under certain conditions, be invoked against a third State. That rule was unacceptable to his delegation, since it ran counter to the 1969 Vienna Convention on the Law of Treaties, to which Spain was a party.

29. Various solutions to the problems posed by paragraph 2 had been suggested. In his delegation's view the best solution would be the deletion of paragraph 2, since it was superfluous in view of the existence of the 1969 Vienna Convention. Unless some solution were found, his delegation would not be able to vote in favour of article 34.

30. Mr. SUCHARIPA (Austria) said that, while his delegation welcomed paragraph 1 of article 34 as a clear restatement of a rule of general international law, it was unable to accept the rule stated in paragraph 2, which ran counter to the 1969 Vienna Convention and was contrary to general international law.

31. Mr. MARCHAHA (Syrian Arab Republic) said that paragraph 2 of article 34 clearly posed legal problems for a number of delegations. One reason why the text was unclear was that it dealt only with cases where an agreement might have been concluded between a predecessor and a successor State and made no provision for cases where no such agreement had been concluded. The draft convention should either mention all contingencies specifically, or remain non-specific.

32. Paragraph 2(*b*) presented the additional difficulty that it was at variance with paragraph 2(*a*). His delegation believed that the problems created by article 34 could be overcome by deleting paragraph 2, and placing paragraph 1—which appeared to be broadly acceptable—as paragraph 2 of article 32.

33. In that context, his delegation could accept the Kenyan amendment to article 32 (A/CONF.117/C.1/L.55). Such a solution would have the merit of bringing the provisions relating to State debt into line with those dealing with State property (article 12) and State archives (article 23). His delegation proposed that solution in the hope that it could be accepted without a vote; it was not submitting a formal amendment.

34. Mr. OESTERHELT (Federal Republic of Germany) said that he had been surprised by the explanation given by the Expert Consultant. The intentions of the authors of paragraph 2(*a*) appeared to go even further than had at first seemed to be the case. The Expert Consultant had referred to objective régimes which could be invoked against a third State that had neither accepted the agreement between the predecessor and successor States that created that so-called "régime", nor acceded to the convention as a whole. That idea was totally unacceptable to his delegation within the framework of the draft convention. The rules laid down in articles 34, 35 and 36 of the 1969 Vienna Convention on the Law of Treaties were absolutely clear. Furthermore, both in 1968 and in 1969, when the 1969 Vienna Convention was being prepared, the idea of treaties "creating an objective legal régime" had been discussed but, for very good reasons, had not been incorporated into the Convention. It was an idea which could have very far-reaching consequences, could potentially affect the interests of all delegations, and should be limited to a very few and very clear cases such as territorial régimes.

35. His delegation therefore supported the proposals to delete paragraph 2(*a*), or to replace the word "or" at the end of the subparagraph by the word "and". If article 34 remained as drafted, it could be interpreted, for the legal reasons already expounded, only as a provision which had third party effects within the framework of the convention. His delegation's understanding would then be that unless the third State was a party to the convention, an agreement referred to in

paragraph 2(*a*) of article 34 would not be invoked by the predecessor or by the successor State against a third State, even if the consequences of that agreement were in accordance with the provisions of Part IV of the convention.

36. Mr. MONNIER (Switzerland) said that his delegation's objections to paragraph 2 of article 34 concerned the possibility that an agreement concluded between the predecessor State and the successor State could be invoked against a third State, when the latter had not accepted that agreement, provided that the consequences of the agreement were in accordance with the provisions of the convention.

37. Mention had been made of the fundamental principle of *res inter alios acta* which opposed such a situation, and the Expert Consultant had referred to articles of the 1969 Vienna Convention relating to cases where treaties could be binding on or give advantages to third States. Article 34 of the 1969 Vienna Convention in fact provided that a treaty did not create either obligations or rights for a third State without its consent, and article 35 required the express acceptance of the third State in writing. It had also been said that the possibility he had mentioned resulted from the fact that a succession of States created an objective situation.

38. However, an agreement between the predecessor and successor States that could be invoked against a third State without its consent was a very different matter. Such an agreement was a consequence of succession, but it covered a particular contractual relationship. An argument based on the existence of an objective situation could not be used to attempt to bind a third State which had not given its consent.

39. It had also been said that the substantive rules of the Convention would constitute the general law of succession, but such a comment was premature since the International Law Commission had indicated in its commentaries that the future convention might constitute accepted customary law if a number of conditions were fulfilled. A particularly important factor would be the interest which States showed in the future convention. In that connection, the status of signature of the 1978 Vienna Convention[7] indicated the need for a cautious approach.

40. The principle of *res inter alios acta* was such a basic principle that no exceptions to it were possible. Relevant in that regard was the decision of the Permanent Court of International Justice in the Case of the Free Zones of Upper Savoy and the District of Gex[8] that Switzerland, not being a party to the Treaty of Versailles, could not be bound by its provisions.

41. Furthermore, if the solution proposed by the International Law Commission was accepted, and an agreement between the predecessor and successor States could therefore be invoked against a third State without its consent, simply on the basis of its conformity with the provisions of the future convention, the Swiss delegation would have an objection of a different order. That objection related to the nature of the rules of the convention which such a solution implied. Those rules would in effect be mandatory and could not be waived by means of a convention.

42. For those reasons the Swiss delegation could not accept the proposed wording and found it difficult to accept the compromise solution involving replacement of the word "or" by the word "and". It therefore reintroduced the amendment calling for the deletion of paragraph 2(*a*) of article 34, originally proposed by Pakistan (A/CONF.117/C.1/L.12), but later withdrawn by its sponsor. His delegation could also support the proposal to delete the whole of paragraph 2.

43. Mr. NATHAN (Israel) said that paragraph 2(*a*) seemed to be in contradiction with the basic rule established in paragraph 1 that a succession of States did not as such affect the rights and obligations of creditors. Rules embodying the relevant norms of customary international law had been codified in articles 34 and 36 of the 1969 Vienna Convention. The contradiction arose because subparagraph (*a*) of paragraph 2 had been inserted disjunctively from subparagraph (*b*) which, as a consequence of the basic rule in paragraph 1 and in full conformity with it, referred to the case where the agreement between the predecessor and successor States had been accepted by a third party.

44. As well as being contradictory, subparagraph (*a*) also appeared to be largely meaningless in providing that the consequences of an agreement should be in accordance with the provisions of Part IV of the draft convention. An analysis of paragraph 2(*a*) in the light of the provisions of section 2, showed that as far as articles 35, 38 and 39 were concerned, the convention established the primacy of an agreement concluded between the predecessor and successor States. The rules established in those articles were residuary and provided for cases in which there was no agreement. In that context, articles 35, 38 and 39 did not impose any limitations on the freedom of contract of the predecessor and successor States. As far as article 37 was concerned, the question did not arise, since the predecessor State simply disappeared, leaving one unitary State.

45. The question could arise only where a newly independent State was involved under article 36. However, even within the context of that article it could hardly be envisaged, since paragraph 2 of article 36 was concerned with the invalidation of articles which infringed the principle of permanent sovereignty, whereas paragraph 1 laid down mandatory rules concerning the link between State debts and the activity of the predecessor State in the territory to which the succession related. Furthermore, paragraph 2(*a*) of article 34 was irrelevant or even meaningless in the context of that article, since the International Law Commission could not have intended that the rules in articles 34 and 36 should be violated.

46. It had been suggested that the whole of paragraph 2 of article 34 should be deleted. His delegation considered the proposal unsatisfactory because of the basic principle of *res inter alios acta* embodied in paragraph 1, of which the provisions in the first part of

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[7] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

[8] *Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J.*, Series A, No. 22, p. 17.

paragraph 2 and subparagraph (*b*) constituted a natural corollary. It could also be concluded that there was a possibility of novation.

47. From the point of view of drafting, the article showed a lack of symmetry which the Drafting Committee might see fit to remedy. Paragraph 1 referred to the rights and obligations of creditors, whereas paragraph 2, in referring to those same creditors, called them "a third State, an international organization or any other subject of international law". It might be more satisfactory to bring the two paragraphs into line by replacing the word "creditors", in paragraph 1, by the words "a third State, an international organization or any other subject of international law asserting a claim".

48. Mr. ABED (Tunisia) said that the explanations given by the Expert Consultant had clarified the intention of the International Law Commission and had enabled his delegation to understand the equitable solution which the Commission had proposed in order to protect the rights of creditors.

49. In the view of his delegation, paragraph 2(*a*) strengthened the basic principle enunciated in paragraph 1 which precluded any infringement of the rights and obligations of creditors. There was nothing to be afraid of in such a provision: the question of extinguishing debts or affecting the rights of creditors did not arise, since a clause so providing would be null and void and therefore could not be invoked. It would also be contrary to the spirit and letter of the future convention in that it would affect the rights of creditors. As the Expert Consultant had pointed out, the debt had to be maintained. From the legal standpoint the only interest which a third State might have in rejecting the agreement between the predecessor and successor States would be in order to place the burden of debt on the predecessor State, particularly when the consequences of that agreement were in accordance with the provisions of the convention.

50. For those reasons the Tunisian delegation fully supported article 34 as it stood and hoped that it would be in no way amended. It could, however, support the deletion of the whole of paragraph 2, as a compromise solution.

51. Mr. HAWAS (Egypt) said that, having listened to the explanations given by the Expert Consultant, his delegation considered article 34 to be of vital importance inasmuch as it embodied, in paragraph 1, the safeguard clause that a succession of States as such did not affect the rights and obligations of creditors. That paragraph established a fundamental rule for Part IV of the convention. Paragraph 1 could not properly be compared with articles 12 or 23 since the cases covered by those articles were of a subsidiary nature and arose only exceptionally.

52. The problems posed by paragraph 2 of article 34 could possibly be solved by means of a rewording. In his delegation's view, paragraph 2 was concerned solely with the consequences of an agreement between the predecessor and successor States and meant that only those consequences could be invoked. While his delegation believed that an agreement between two parties could not be invoked against a third, it also believed that an agreement could not be imposed on them. Moreover, it was the right of the predecessor and successor States to conclude any agreements provided that such agreements did not affect the rights of the creditor.

53. In the light of that interpretation his delegation could accept the substance of article 34, provided a distinction was made between an agreement to which a third party had had access or had accepted, and which therefore could be invoked, and an agreement between the predecessor and successor States to which the creditor was not a party and by whose consequences it was not affected.

54. Mr. MIKULKA (Czechoslovakia) said that his delegation had no difficulty in accepting paragraph 1 of article 34, which contained a useful safeguard clause. As for paragraph 2, its subparagraph (*b*) was fully in conformity with the rule laid down in article 34 of the 1969 Vienna Convention, according to which a treaty did not create either obligations or rights for a third State without its consent.

55. The problem which had arisen therefore concerned only paragraph 2(*a*). In his view, the provisions of that subparagraph could only purport to apply to a third State which became a party to the future convention. It would of course in no case apply to international organizations or other subjects of international law, which could not become parties to the convention.

56. The purpose of the draft convention was to codify existing customary international law, the rules of which were binding upon States even in the absence of agreement on their part. The draft convention contained, however, a number of new rules which would be binding only upon States which became parties to it. For other subjects of international law, the convention would represent *res inter alios acta*. Consequently, an agreement between predecessor and successor States, even if its terms were in conformity with the provisions of the draft convention, could not be invoked against a third party creditor who was not a party to the convention.

57. Nevertheless, his delegation did not favour the complete deletion of subparagraph (*a*). Its provisions were useful to cover the case of a creditor State which became a party to the future convention, provided, of course, the agreement between the predecessor and successor States was in conformity with the provisions thereof.

58. His delegation therefore proposed that paragraph 2 should be reworded as follows:

> "An agreement between the predecessor State and the successor State or, as the case may be, between successor States, concerning the respective part or parts of the State debts of the predecessor State that pass, cannot be invoked by the predecessor State or by the successor State or States, as the case may be:
>
> "(*a*) against a third State party to the present Convention asserting a claim, unless the consequences of that agreement are in accordance with the provisions of the present Part; or
>
> "(*b*) against a third State, an international organization or any subject of international law asserting a

claim, unless the agreement has been accepted by that third State, international organization or other subject of international law."

59. The Czechoslovak delegation did not favour the proposal to replace the word "or" by the word "and" at the end of paragraph 2(*a*), because that change would have the effect of rendering cumulative the conditions set forth in subparagraphs (*a*) and (*b*). The result would be to restrict unduly the sovereign right of States that were not parties to the convention to accept an agreement between a predecessor and a successor State which might be favourable to them, even if not in conformity with the provisions of the convention.

60. Mrs. THAKORE (India) said that her delegation found article 34 satisfactory. While restricting the topic of State debts, it served to safeguard the interests of creditors by means of a special provision. Those interests were thus adequately protected, as her delegation had pointed out in its statement during the consideration of article 31 (31st meeting).

61. The Indian delegation opposed the revived proposal to delete paragraph 2(*a*) and favoured the retention of article 34 as it stood. The rationale for paragraph 2(*a*) was given in paragraphs (11) and (12) of the International Law Commission's commentary on article 34 supplemented by the explanations furnished by the Expert Consultant at the present meeting—explanations which fully satisfied her delegation.

62. Mr. PIRIS (France) thanked the Expert Consultant for his explanations, which indicated clearly the intention of the authors of paragraph 2 of article 34. That intention had obviously been to bring about a major modification of existing international law.

63. The French delegation opposed such a departure from the existing international law on the succession of States. It also believed that the inclusion of article 34, paragraph 2, in the draft articles would jeopardize the future of the draft convention. That paragraph ran counter to the fundamental principle of international law on the subject of third States, as codified in articles 34 to 38 of the 1969 Vienna Convention. Article 34 of the present draft articles purported to impose upon a third State an agreement concluded between two other States which the third State had not accepted either by subscribing expressly to it or by signing the proposed convention.

64. The problem was not one of different political approaches; it was a strictly legal issue, as was shown by the statement just made by the Czechoslovak delegation and also by the very useful comments submitted by Hungary (A/CONF.117/5/Add.1).

65. Clearly, the best and the simplest solution was to delete paragraph 2 altogether, as the Expert Consultant himself had suggested. Unless that were done, the French delegation would request a separate vote on each of the two paragraphs of article 34 and, if paragraph 2 was adopted, it would endorse the interpretation of that paragraph given by the representative of the Federal Republic of Germany.

66. Mr. BARRETO (Portugal) said that the provisions of article 34, paragraph 2(*a*), might well be favourable to Portugal both as a predecessor State and as a debtor State. Nevertheless, his delegation could not accept the concept of a novation of obligations operating against the will of a creditor State, apart, of course, from the case of the disappearance of the original debtor State.

67. His delegation accordingly had reservations concerning the subparagraph and favoured its deletion or, alternatively, the substitution of the word "and" for the word "or" at the end of the subparagraph. It could even accept the deletion of paragraph 2 as a whole.

68. Mrs. BOKOR-SZEGÖ (Hungary), speaking on a point of order, said that the difficulty which had arisen in connection with article 34, paragraph 2(*a*), involved a very difficult problem of international law, and not a difference of opinion between different groups of States. Under rule 26(*a*) of the rules of procedure, therefore, she proposed that consultations should be held to enable the members of the Committee to reach agreement on a satisfactory solution.

69. The CHAIRMAN put the motion of the representative of Hungary to the vote.

The motion was carried by 51 votes to none, with 7 abstentions.

The meeting rose at 12.45 p.m.

39th meeting

Tuesday, 29 March 1983, at 3.25 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 34 (Effects of the passing of State debts with regard to creditors) (*concluded*)

1. Mr. BEDJAOUI (Expert Consultant), replying to requests for clarification made at the previous meeting, said he had been asked whether article 34 contained a drafting error, in that paragraphs 1 and 2 appeared to adopt different approaches with regard to creditors. He explained that in fact the International Law Commission's intention was to safeguard all possible creditors and it had accordingly referred to the rights and obligations of creditors in general in paragraph 1, and to subjects of international law as creditors in paragraph 2. The creditors referred to in paragraph 1 might be creditors under international or private law. The drafting of the article was thus not fortuitous.

2. It had been suggested that the conjunction "or" in paragraph 2(*a*) might be deleted. He pointed out that the effects of such a change would be far-reaching, in that the conditions in both subparagraphs (*a*) and (*b*) would have to be satisfied, in other words, a third State creditor would be obliged to give its consent only in those cases in which the consequences of the agreement were in accordance with the provisions of Part IV. Such a provision would tend to limit the rights of third party creditors, in that they would be deprived of the right to consent to an agreement which was not in conformity with the convention, even though they might wish to consent to such an agreement.

3. Article 34 raised a number of issues, all of them difficult to resolve. The deletion of paragraph 2(*a*), for example, could pose greater problems than would the deletion of paragraph 2 as a whole.

4. Mr. FAYAD (Syrian Arab Republic) said that there seemed to be a large measure of agreement among delegations which had spoken at the previous meeting that paragraph 2 was not in fact essential for the purpose of safeguarding the rights of creditors. His delegation accordingly proposed that the paragraph should be deleted.

5. Mr. MIKULKA (Czechoslovakia) said that his delegation could not agree with the Expert Consultant's interpretation of paragraph 1 of article 34. There were two contradictions in the draft. First, the text of article 34 was at variance with article 6, which stipulated that nothing in the articles should be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons. Second, paragraph (10) of the International Law Commission's commentary to article 34 stated that the word "creditors" covered such owners of debt claims as fell within the scope of the articles in Part IV and should be interpreted to mean third creditors, thus excluding successor States or, when appropriate, physical or juridical persons under the jurisdiction of the predecessor or successor State. He wondered why the International Law Commission had chosen to omit any reference to physical or juridical persons belonging to a third State.

6. Mr. HAWAS (Egypt) said that, while it might have been possible to include a provision in paragraph 2 stating that a third party could not reject the consequences of an agreement if those consequences were in conformity with the provisions of Part IV, he felt that too many difficulties still remained with regard to the paragraph, and therefore supported the proposal to delete it.

7. Mr. BEDJAOUI (Expert Consultant) said that in drafting article 34 the International Law Commission had hoped to provide a more positive safeguard clause than that contained in article 6, but that the wording chosen represented a compromise solution to the problem of safeguarding private creditors. He pointed out that paragraph (10) of the commentary on the article did not exclude foreign private creditors; only national private creditors were ruled out.

8. Mr. RASUL (Pakistan) said that, rather than delete paragraph 2, it would be more advisable to improve the drafting in a way which would more adequately safeguard the rights of creditors under article 34.

9. The CHAIRMAN invited the Committee to vote on the Syrian Arab Republic's oral proposal to delete paragraph 2.

10. Mr. NAHLIK (Poland), speaking on a point of order, said that it would be more appropriate to vote first on the deletion of subparagraph (*a*) of that paragraph, since for many delegations the outcome of that vote would affect their vote on the article as a whole.

11. Mrs. OLIVEROS (Argentina) said that her delegation wished to know, before the vote on the Syrian delegation's proposal, whether paragraph 1 would remain as it stood, or whether it would be linked to another paragraph or to the safeguards in article 6.

12. Mr. HAWAS (Egypt), speaking on a point of order, said that, although the representative of Pakistan had suggested that the text of paragraph 2 might be improved, no amendment to that effect had been submitted. The Committee had therefore no option but to vote on the Syrian delegation's proposal.

13. Mr. ROSENSTOCK (United States of America), speaking on a point of order, said that the Chairman had given a ruling and that the only procedurally correct course of action was either to vote on the Syrian delegation's proposal or else to challenge the Chairman's ruling formally.

14. The CHAIRMAN, replying to the Hungarian delegation's request for clarification, said that the Committee had before it three proposals: first, the proposal by the Syrian Arab Republic to delete paragraph 2 as a whole; second, the proposal made orally by Switzerland that subparagraph (*a*) of that paragraph should be deleted; and third, the request by France and the United Kingdom for separate votes on paragraphs 1 and 2. It seemed logical to vote first on the Syrian delegation's proposal and he invited the Committee to do so.

The oral proposal of the Syrian Arab Republic was adopted by 38 votes to 6, with 28 abstentions.

15. The CHAIRMAN invited the Committee to vote on the text of article 34 proposed by the International Law Commission, as amended.

Article 34, as amended, was adopted by 61 votes to none, with 11 abstentions, and was referred to the Drafting Committee.

16. Mr. OESTERHELT (Federal Republic of Germany), speaking in explanation of vote, said that his delegation had voted in favour of the amendment proposed by the Syrian Arab Republic because of the consequences which paragraph 2(*a*) could have entailed; in the view of his delegation, such consequences would not have been in conformity with international law.

17. His delegation had also voted for the text of article 34 as amended, on the understanding that paragraph 1—the only remaining provision of the article—applied *a fortiori* to agreements between the parties to a succession of States.

18. Mr. NAHLIK (Poland) said that his delegation had abstained in the vote on the Syrian Arab Republic's proposal as it was not in agreement with the ruling that that proposal should be put to the vote first.

19. If a vote had been taken first on the amendment originally proposed by Pakistan (A/CONF.117/C.1/L.12), later reintroduced by the representative of Switzerland, the possible elimination of paragraph 2(*a*) as a consequence of such a vote would have so changed the substance of paragraph 2 that the votes of a number of delegations could have been changed. In the circumstances, his delegation had had no choice but to abstain.

20. Mr. HAWAS (Egypt) said that his delegation had voted for the Syrian Arab Republic's proposal as being the best alternative available to the Committee. It had also voted for article 34, as amended, which preserved the main principle embodied in Part IV and represented a safeguard for creditors.

21. His delegation's vote in favour of the article as amended did not change its conviction that the intentions of the International Law Commission in proposing paragraph 2 were already reflected in international law and practice.

22. Mr. MONNIER (Switzerland) said that his delegation had reintroduced the amendment of Pakistan because such an amendment would have eliminated the main point of disagreement on article 34. His delegation had been able to accept the amendment proposed by the Syrian Arab Republic and had voted for it. In his view, the Chairman's ruling that the Committee should vote first on that amendment had been sound.

23. Mr. YÉPEZ (Venezuela) said that his delegation had voted against the amendment proposed by the Syrian Arab Republic because it considered that the International Law Commission's original text established a harmonious balance between paragraphs 1 and 2. What remained was a provision without legal force, inasmuch as a safeguard clause was in any case provided in article 6.

24. Mr. PIRIS (France) said that his delegation had voted in the same way and for the same reasons as the Federal Republic of Germany.

25. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation had abstained in the vote on the amendment proposed by the Syrian Arab Republic because it had felt that the Committee was not yet ready to vote on the issue: many questions remained pending and a better compromise could have been found if the Committee had not been pressed. His delegation had voted for the article as amended.

26. Mr. BEN SOLTANE (Tunisia) said that his delegation would have preferred the original text of the International Law Commission to stand. As a compromise, however, it had voted both for the amendment of the Syrian Arab Republic and for the article as amended.

27. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had abstained in the vote on the amendment of the Syrian Arab Republic because it considered it inappropriate that the Committee should have voted first on that amendment, bearing in mind that proposals had been submitted regarding subparagraphs (*a*) and (*b*) of paragraph 2 and should have been given priority in the vote.

28. Mr. KADIRI (Morocco) considered that creditors would always be protected under the terms of article 6. His delegation had, however, voted for the Syrian delegation's amendment and for article 34 as amended which was in close harmony with article 34 of the 1969 Vienna Convention on the Law of Treaties.[1]

29. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation had voted for the amendment of the Syrian Arab Republic for the sole reason that it was opposed to subparagraph (*a*) of paragraph 2.

30. Mr. KOLOMA (Mozambique) said that his delegation had abstained in the vote both on the Syrian Arab Republic's amendment and on the article as amended. It considered that paragraph 2 represented one of the most important applications of the rule set out in paragraph 1. His delegation would have preferred subparagraph (*a*) to be amended in such a way as to indicate that it was applicable only if the third State was a party to the convention.

31. Mr. ECONOMIDES (Greece) said that his delegation had voted for the amendment proposed by the Syrian Arab Republic because it considered that paragraph 2(*a*) contravened the law of treaties. It had voted in favour of article 34 as amended in the belief that the remaining provision safeguarded the rights of creditors whether or not they were subjects of international law.

32. Mr. MOCHI ONORY DI SALUZZO (Italy) said that his delegation had voted for the amendment of the Syrian Arab Republic and for the text of article 34 as amended for the reasons outlined by the representative of Greece.

33. Mr. LAMAMRA (Algeria) said that his delegation had abstained in the votes both on the amendment of the Syrian Arab Republic and on the text of article 34 as amended. Those abstentions should not be regarded as inconsistent with the substance of the statement which his delegation had made at the previous meeting.

34. Mr. SKIBSTED (Denmark) said that his delegation had voted for the amendment of the Syrian Arab Republic because it considered that paragraph 2(*a*) was contrary to article 34 of the 1969 Vienna Convention on the Law of Treaties. Moreover, in its opinion, the notion of "the consequences of an agreement" contained in that subparagraph was too imprecise to be used as a legal term.

35. His delegation had voted for paragraph 1 because that paragraph reaffirmed a fundamental principle of general international law.

36. Mr. KOREF (Panama) said that his delegation had voted against the Syrian Arab Republic's amendment as it had hoped that, if paragraph 2 had been retained, the Swiss delegation's amendment might have been adopted. The result would have been a complete article 34 instead of a fragment. He had nevertheless voted in favour of paragraph 1 as he believed that such a provision was necessary.

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[1] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

37. The CHAIRMAN announced that the Committee had completed its consideration of article 34.

New article 24 bis (Preservation and safety of State archives) (*continued*)*

38. The CHAIRMAN said that the Committee would resume its consideration of the proposed new article 24 *bis* and drew attention to the revised amendment proposed by the United Arab Emirates at the 37th meeting (A/CONF.117/C.1/L.50/Rev.1).

39. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had responded favourably to the request made by the representatives of Canada and the United Kingdom at the Committee's 35th meeting that a decision on his delegation's proposal for a new article 24 *bis* should be postponed so that delegations could consult with a view to working out an acceptable text.

40. After having exchanged ideas with the representatives of the United States and the United Kingdom, his delegation wished to submit a further revised text for consideration and adoption by the Committee as article 24 *bis*:

> "For the purpose of the implementation of the provisions of this Convention, an obligation to the predecessor State to transfer State archives to the successor State entails the consequential obligation to take all measures to prevent damage or destruction to any part of State archives which, according to the provisions of the articles of the present Part, pass to the successor State."[2]

41. His delegation had for the moment confined itself to drafting an article 24 *bis*, leaving open the option either to incorporate a similar text in another article in Part II regarding State property, or to include among the General provisions in Part I a single new article which would deal with the preservation and safety of both State property and State archives.

42. His delegation would prefer two separate articles to be inserted in the Parts covering State property and State archives respectively, solely for the reason that Part I (General provisions) contained articles and provisions which were applicable to the draft convention as a whole, while for the same reason the Part relating to State debts would not be covered. If, however, delegations felt strongly that such a provision should be included among the General provisions, his delegation would be prepared to agree, if the Committee so desired and if the revised text which he had just introduced as article 24 *bis* was acceptable.

43. The CHAIRMAN invited preliminary comments on the revised proposal of the United Arab Emirates which could not however be voted upon until its text had been circulated.

44. Mr. HAWAS (Egypt) said that his delegation would continue to support the proposal of the United Arab Emirates, which was both useful and relevant. The rule set out in the proposed new article should also apply to Part II regarding State property and the Drafting Committee should therefore be invited to consider an appropriate text for that purpose.

45. His delegation would, however, retain an open mind on any decision taken by the Drafting Committee as to whether there should be only one article in the General provisions covering both issues or two separate articles.

46. Mr. MIKULKA (Czechoslovakia) said that his delegation would require more time before it could express its views on the new proposal.

47. Mr. NAHLIK (Poland) said that the amendment was important and that a similar amendment should be added to Part II. He considered that the words "to any part" should be deleted in order to forestall an excessively strict interpretation of the provision; in any archival collection there were documents of a temporary or provisional nature which had to be eliminated.

48. Mr. MEYER LONG (Uruguay) wondered whether the obligation to take all measures to prevent damage or destruction to State archives which passed to the successor State was not already covered by the provision relating to the preservation of unity of State archives in article 24. The term "unity" lent itself to more than one interpretation; it could be understood to mean absence of destruction as well as indivisibility. If the term was interpreted in that sense, a new article 24 *bis* would be unnecessary.

49. Mr. KOLOMA (Mozambique) regretted that, unlike the earlier version of article 24 *bis*, the text of the revised new article as proposed by the United Arab Emirates was no longer couched in mandatory terms. According to the newly revised version, the predecessor State would merely assume an obligation instead of having that obligation imposed upon it.

50. Mr. MAAS GEESTERANUS (Netherlands) disagreed with that interpretation; in his view, a legal obligation was certainly stipulated by the newly revised text of the proposed article. His own delegation's reservations regarding the proposal concerned a different aspect. He wondered why the obligation to take all measures to prevent damage or destruction existed only in respect of those State archives which passed to the successor State and not also to those which remained the property of the predecessor State but had to be made available to the successor State under article 25, paragraph 4, or those which had already passed to the successor State and appropriate reproductions of which could be requested by the predecessor State under article 25, paragraph 5.

51. With that reservation, he was, however, prepared to accept the proposed new article if that was the wish of the Committee.

52. Mrs. TYCHUS-LAWSON (Nigeria) suggested that perhaps the word "should" might be added between the words "Part" and "pass to the successor State" near the end of the revised text. From the text as it stood it might be inferred that some parts of State archives might not pass to the successor State under the provisions of the articles of Part III.

53. Mr. BEN SOLTANE (Tunisia) said that the representative of the United Arab Emirates deserved the Committee's thanks for his painstaking efforts to prepare a generally acceptable draft.

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* Resumed from the 37th meeting.

[2] Subsequently issued under the symbol A/CONF.117/C.1/L.50/Rev.2.

54. The Tunisian delegation considered that the new article should appear in the Part devoted to archives, and that a corresponding provision should be included in the Part dealing with State property; since the provision was not applicable to State debts, it should not be inserted under General provisions.

55. He wondered whether, in addition to damage and destruction, the new article should not also mention the disappearance of State archives, which was undoubtedly a possibility, and also whether the phrase "obligation to take all measures" made it sufficiently clear that the predecessor State was required to make the best possible use of all means available for preventing any harm that might befall the State archives concerned.

56. Mr. ROSENSTOCK (United States of America) expressed appreciation of the spirit of compromise in which the proposed new article had been prepared. His delegation had been among those which had initially found the proposal for a new article 24 *bis* unacceptable and unnecessary because it presupposed bad faith on the part of the predecessor State. However, he was now prepared to accept the revised proposal by the United Arab Emirates, subject possibly to the drafting suggestion made by the representative of Poland, in the hope that it would help to establish a more conciliatory atmosphere and thereby help to close some further gaps.

57. The CHAIRMAN said that the preliminary consideration of the revised proposal of the United Arab Emirates involving the addition of a new article 24 *bis* was concluded, and suggested that further consideration of the article should be deferred pending the distribution of the written text.

It was so agreed.

Article 32 (Effects of the passing of State debts) (*continued*)*

New article 31 bis (Passing of State debts) (*continued*)*

58. Mr. YÉPEZ (Venezuela) said that his delegation ound the International Law Commission's text of article 32 perfectly acceptable and, for that reason, could not be in favour of any amendment or modification.

59. With regard to the new article 31 *bis* A/CONF.117/C.1/L.47) proposed by the United States delegation he said that he understood the good intentions of that delegation in submitting a proposal intended to rationalize the various Parts of the draft onvention, but felt that the United States text was nconsistent with article 36, which expressly provided or an exception to the proposed rule. Furthermore, the nternational Law Commission's draft reflected a general intention to promote intensive co-operation between the States concerned with a view to eliminating any disagreements or discrepancies that might arise in onnection with the passing of State debts. That whole philosophy would be weakened by the insertion of he new article proposed by the United States, and he would be regretfully obliged to oppose that proposal if t were put to the vote.

60. The Greek delegation's amendment (A/CONF.117/C.1/L.53) was likewise motivated by the best intentions and had the merit of avoiding the problem with regard to the exception provided for in article 36 which was inherent in the United States proposal. Unfortunately, the Greek amendment also weakened the possibility of positive co-operation being established between interested States, and for that reason his delegation would oppose that amendment as well, should it be put to the vote.

61. Mr. SUCHARIPA (Austria) referred to the statement he had made at the Committee's 6th meeting in connection with his delegation's amendment (A/CONF.117/C.1/L.2) to article 9. Because of the triangular situation arising in connection with State debts, article 32 appeared to his delegation to give rise to even greater problems than articles 9 and 20. While the Netherlands amendment (A/CONF.117/C.1/L.48) did not really improve the untenable construction of article 32, it at least aimed at limiting its damaging effects and he was therefore prepared to support it.

62. For the same reason, he would also support the United States amendment involving the addition of a new article 31 *bis*.

63. He could also agree to the simple deletion of article 32 and the withdrawal of the idea of a new article 31 *bis*, as indicated by the Expert Consultant (34th meeting), but only if the same decision were taken in respect of the corresponding provisions in Parts II and III. In that connection he stressed his disagreement with the theory that there was a qualitative difference between the rules of transfer set forth in the various Parts of the convention, although a quantitative difference might indeed exist.

64. The best solution would be to include a single new article in Part I specifying that a succession of States had the effect of making State property, State archives and State debts pass to the successor State to the extent that such passing was provided for in the substantive clauses of the draft convention. The Greek delegation's amendment was a step in that direction, but the Kenyan amendment to article 32 (A/CONF.117/C.1/L.55) was possibly preferable as making the position even clearer.

65. Mr. KIRSCH (Canada) remarked that the rather delicate problem raised by the Netherlands amendment to article 32 was in reality only a drafting matter; he was pleased to note that there appeared to be general agreement as to the substance of the provision. The article as drafted by the International Law Commission did not fully correspond to the Commission's intentions as explained in paragraph (2) of its commentary on article 32, and the merit of the Netherlands amendment was that it eliminated any uncertainty as to the scope of the rule set forth in the article.

66. He could not accept the view that there was any contradiction or lack of complementarity between articles 32 and 34; the latter article was sufficient in itself and should, like all other articles of the draft convention, be considered in its own context. Accordingly, he would support the Netherlands proposal for the reasons stated, but was also prepared to accept article 32 as it stood.

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* Resumed from the 34th meeting.

67. Turning to the proposed new article 31 *bis*, he said that, for reasons of logic as explained by the Greek representative (34th meeting), there should be some correspondence between articles 8 *bis*, 19 *bis* and 31 *bis*. The fact that the passing of State property and State archives was governed by a rule of transmissibility and that of State debts by a rule of non-transmissibility was, in his view, irrelevant to the issue of correspondence, since article 31 *bis* did not deal with the quantity of State debts which passed but with the fact of their passing. However, he had no strong views on the form which the correspondence between the three articles should take, and was willing to consider the amendment proposed by Kenya.

68. The simplest solution would, of course, be to include a single article in Part I (General provisions) along the lines suggested by the representative of Austria.

69. Mr. MONNIER (Switzerland) noted that article 32 once again raised the question, discussed at length in the context of articles 9 (1st, 2nd and 6th meetings) and 20 (20th to 22nd meetings), of the value of including provisions which gave a theoretical explanation of the phenomenon of passing of property, archives and debts. His delegation had already stated that it doubted the desirability of including such provisions in view of the fact that passing, and the conditions governing passing, were provided for in a section of each Part of the draft convention.

70. It had been suggested that article 32 should be deleted, while articles 9 and 20 were retained, on the grounds that the passing of debts, unlike that of property and archives, rested on a triangular relationship in which creditors played a part together with the predecessor and successor States. Although his delegation would be prepared to accept the deletion of all three articles, it did not consider that the difference in the situation with regard to debts was sufficient to justify deleting article 32 alone.

71. At the same time, that very difference made it imperative to adopt the Netherlands amendment. If all three articles—9, 20 and 32—were to be retained, it was essential in article 32 to make an express reference to article 34. There were no grounds for the fears expressed in the course of the debate that such a reference might give undue pre-eminence to one provision over another; all that was proposed was a simple but vital cross-reference to article 34, whose special importance, as the representative of Canada had observed, had been acknowledged by the International Law Commission in its commentary on article 32.

72. Furthermore, if articles 9, 20 and 32 were all retained, they ought to be accompanied by their logical complements, namely, articles 8 *bis*, 19 *bis* and 31 *bis*; it had become clear in the course of the debate that the scope of the former group was difficult to assess and that they needed the clarification provided by the proposed new articles.

73. The opposition which had been expressed to the United States proposal for a new article 31 *bis* was based essentially on the argument that, if adopted, that new article would tend to highlight the discrepancy between it and the rules laid down in other draft articles of section 2 of Part IV, in particular article 36, which embodied the apparently conflicting rule concerning the non-transmissibility of State debts. That argument might have been valid had the United States draft ended with the words "pass to the successor State", but the inclusion of the proviso "in accordance with the provisions of the articles of the present Part" made it clear that such an article 31 *bis* could not have the effect, directly or indirectly, of forcing the passing of debts where that passing was not provided for, or was expressly excluded, by the provisions of the relevant section of Part IV.

74. The compromise proposal for article 31 *bis* put forward by Greece also contained that proviso and was perhaps a little more precise in drafting than the United States amendment. In the final analysis, there was in substance no real difference between the two proposals, and his delegation could support either of them, with a slight preference for the Greek proposal.

75. The amendment of Kenya was also acceptable, provided a similar modification was made to articles 9 and 20.

76. The representatives of Austria and Canada, however, had put forward an idea which his own delegation had been intending to raise and which might represent a genuine basis for a constructive compromise. Instead of including the proposed articles 8 *bis*, 19 *bis* and 31 *bis*, a separate provision might be inserted in Part I (General provisions) to the following effect:

> "A succession of States has the effect of making the State property, archives and debts of the predecessor State pass to the successor State within the limits and in accordance with the conditions laid down by the provisions of the articles of the present Convention".

His delegation had prepared the text of such an amendment and was ready to submit it formally at any time the Committee considered appropriate.

77. Mr. MURAKAMI (Japan) recalled that his delegation had abstained in the vote on article 8 *bis* because, in its view, the contents of that new article were already implicit in the existing provision and its insertion was thus not really necessary.

78. However, since article 8 *bis* had been adopted in Part II, it was necessary to include corresponding provisions in Parts III and IV, in order to be consistent and, more importantly, to preclude an erroneous *a contrario* interpretation of those Parts. For that reason, his delegation supported articles 19 *bis* and 31 *bis* proposed by the United States (A/CONF.117/C.1/L.42 and L.47).

79. His delegation considered the amendment to article 32 proposed by the Netherlands as a useful clarification which at the same time did not change the substance of the article. It accordingly supported it.

80. Mr. KADIRI (Morocco) said that, in his delegation's view, the use of the term "arising" did not fully cover all the cases of succession of States which article 32 was intended to cover. It notably failed to allow for the situation of a territory which, before colonization, had possessed the structures of a State, with all the juridical implications of that fact in terms of rights and obligations which were enshrined in *jus gentium* and would subsist, though in abeyance, even during a per-

iod of colonial rule. It was doubtful whether, after such a country had regained its independence, it was correct to speak of an "arising" of rights; it might be more accurate to use a term such as "renascence" or "revival" to refer to existing rights frozen by a state of affairs which by its very nature was a negation of the rule of law.

81. That view seemed to be borne out by the choice of terms used in analogous contexts in the treaties cited in the commentary to article 9. By employing the notions of "acquisition" and "cession", those instruments expressed the idea of the continuous existence of rights which merely underwent a transfer from one holder to another. That was reinforced by the concept of passing as incorporated in the latter part of articles 9, 20 and 32.

82. In order to reflect that idea of continuity of rights, it would be tempting to use the word "acquisition", which implied the survival of pre-existing rights, were it not that that term was employed in private international law in order to distinguish the acquisition of nationality by, for instance, naturalization, from the attribution of nationality of origin *jure sanguinis* or *jure soli*; hence the word was not quite appropriate in the context of the provisions under discussion. It was worth recalling that the International Law Commission and the 1978 Vienna Conference on Succession of States in Respect of Treaties had not opted exclusively for the *tabula rasa* approach but had combined it with the requirement of continuity as an essential element in the legal certainty of international relations. In the same way, although succession of States in terms of the present draft convention entailed *de facto* and *de jure* the extinction of the rights and obligations of the predecessor State, it did not invariably lead to an "arising" of rights for the successor State in the sense of the Commission's draft.

83. For those reasons, his delegation would prefer the word "emergence" to the word "arising". That term had the merit of being very broad semantically, encompassing both a passive sense and the positive aspects illustrated by the common expression "the emergence of a newly independent State". Furthermore, in the terminology of agronomic research the term "emergence" ("*obtention*" in French) meant the emergence of a genetically new plant variety as a result of the crossing of two existing varieties. In that sense emergence meant the acquisition of something new without implying discontinuity.

84. His delegation supported the amendment of Kenya which had the merit of being very clear and coherent. In view of all the compromise proposals and suggestions which had been offered, he suggested that an informal group should be established to consider all the problematical aspects of the proposed articles 8 *bis* and 31 *bis* and to find a generally acceptable compromise, preferably in the form of a kind of package deal. Such an outcome would be in the interests of all concerned.

85. Mr. NDIAYE (Senegal) said that his delegation had voted in favour of retaining paragraph 1 of article 34 because it provided necessary safeguards for creditors. His delegation would have preferred the whole of article 34 to be retained, but since it had now been reduced to a very simple statement he suggested that it might be introduced slightly earlier as paragraph 2 of article 32. That seemed appropriate because article 32 dealt in a general way with the effect of the passing of State debts and the surviving paragraph of article 34 covered a specific aspect of that question. Thus paragraph 2 of article 32 might read: "However, a succession of States does not as such affect the rights and obligations of creditors".

86. Mr. RASUL (Pakistan) suggested that the Committee should consider adopting the amendment of Kenya to article 32. That amendment would then necessitate corresponding drafting changes in articles 9 and 20. It was his delegation's view that, as a result, the concerns underlying the three proposed new articles 8 *bis*, 19 *bis* and 31 *bis*, would be taken care of. That might be a generally acceptable compromise solution to a particularly delicate issue.

87. The CHAIRMAN observed that the Committee was engaged in debating one of the most difficult questions raised by the draft convention. Negotiations on the point were proceeding but had not yet reached the stage of producing any concrete proposals. In view of the pressure of time and the need to reach a conclusion as soon as possible, he suggested that the Committee should follow the procedure suggested by the representative of Morocco and establish an informal group, composed of the sponsors of amendments and other interested delegations, to consider the question with a view to producing a generally acceptable compromise. Further debate on proposed new article 31 *bis* and article 32 should accordingly be deferred until the work of that informal group produced some results.

It was so decided.

Organization of work

88. The CHAIRMAN noted that the Committee had still to consider the following major items: new article 24 *bis*, the articles relating to General provisions, the regrouping of articles 7, 18 and 30, and possible provisions on dispute settlement.

89. He suggested that at its next meeting the Committee should consider articles 1 to 6, together with new article 6 *bis* and the questions raised by articles 7, 18 and 30. At the same time, delegations might usefully be discussing informally the question of a reservation clause, which had already been raised in the Committee, so that when it came to be considered formally the Committee would start with a clear position.

90. He had been consulting with the President of the Conference and the Chairman of the Drafting Committee concerning the manner in which the Drafting Committee should report on the results of its work. The Committee of the Whole had requested the Drafting Committee to report directly to the plenary Conference on its preparation of the preamble and final clauses. In the case of the substantive provisions, on the other hand, the practice of earlier codification conferences had been to consider the Drafting Committee's report first in the Committee of the Whole and transmit it subsequently to the Conference. In view of the pressure of time, however, he had agreed with the President

of the Conference and the Chairman of the Drafting Committee that it would be preferable for the Drafting Committee to report directly to the Conference on the substantive provisions also. That procedure was fully in conformity with rule 47, paragraph 2 of the rules of procedure and would have the advantage of facilitating the work of the Rapporteur, who would if necessary be able to complete her draft report on the work of the Committee of the Whole and send it for translation and distribution before the Drafting Committee had finished its work.

91. That procedure would be without prejudice to the Committee of the Whole's decisions on articles 15, 23 and 27; in those cases, where the Drafting Committee had been requested to submit recommendations, the Drafting Committee would report to the Committee of the Whole.

92. If he heard no objections, he would take it that the Committee of the Whole agreed to that procedure.

It was so decided.

The meeting rose at 6.05 p.m.

40th meeting

Wednesday, 30 March 1983, at 10.20 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Appointment of a Working Group on article 32 and new articles 31 bis *and 19* bis

1. The CHAIRMAN proposed, in the light of the discussion which had taken place at the previous meeting, that a working group should be established to consider article 32 and the amendments thereto, together with the proposed new articles 31 *bis* and 19 *bis*, and to report thereon to the Committee of the Whole.

2. He suggested that the group should be composed of representatives of all the delegations which had submitted proposals and amendments—including oral amendments—relating to those articles, namely Greece, Kenya, Morocco, Netherlands, Senegal, Switzerland and the United States of America, as well as the representatives of Algeria, Austria, the Federal Republic of Germany and France, who had shown a special interest in those articles during the debate. He further suggested that the working group should be open to any other interested delegation. Lastly, he proposed that Mr. Kadiri (Morocco) should serve as Chairman of the proposed working group.

3. In the absence of comment, he would take it that the Committee agreed to adopt that proposal.

It was so decided.

Article 1 (Scope of the present articles)

4. The CHAIRMAN invited the Committee to begin consideration of Part I of the draft articles and to take up article 1 first of all. In accordance with the usual practice of codification conferences, article 2, dealing with the use of terms, would be discussed at the end of Part I.

5. Article 1, which indicated the scope of the draft articles as a whole, was related to articles 7, 18 and 30, which indicated the scope of the articles in Parts II, III and IV, respectively.

6. Mr. ECONOMIDES (Greece) pointed out that article 1 was identical in its terms with article 7, article 18 and article 30. He therefore proposed, purely as a matter of drafting, that the four articles should be merged into one, drafted on the following lines:

> "The present articles apply to the effects of a succession of States in respect of State property (articles 7 to 17), archives (articles 18 to 29) and debts (articles 30 to 39)."

7. Mrs. BOKOR-SZEGÖ (Hungary) said that the Greek representative's proposal could give rise to some difficulty with regard to interpretation, among other reasons because the term "State property" was used not only in Part II but also in Part IV. She was thinking in particular of articles 35 and 36.

8. Mr. SUCHARIPA (Austria) supported the proposal to merge articles 1, 7, 18 and 30. As a further drafting improvement, he suggested that the concluding words of article 1, as amended by that proposal, "in respect of State property, archives and debts", should be expanded to read "in respect of State property, archives and State debts towards other subjects of international law". He further suggested that the title of the draft convention should be amended to read: "Draft convention on succession of States in respect of State property, archives and State debts towards other subjects of international law".

9. Mr. NATHAN (Israel) pointed out that the term "State debts" was defined in article 31. Consequently he was unable to support the change suggested by the Austrian representative. He suggested that the change should be limited to replacing in article 1 the last word, "debts", by "State debts", without adding any formula which might lead to difficulties of interpretation. He suggested the same approach with regard to the title of the draft convention.

10. Mr. GUILLAUME (France) welcomed the Greek proposal to merge articles 1, 7, 18 and 30 but suggested that the actual language to be used should be left to the Drafting Committee.

11. He could not agree to the qualification of the word "debts" by the insertion before it of the word "State". As far as concerned the French version and, he believed, also the Spanish text, the word "State" already qualified not only "property" but "archives and debts" as well.

12. Mr. MIKULKA (Czechoslovakia) said that it had been suggested that the provisions concerning the use of the terms "State property", "State archives" and "State debts", in articles 8, 19 and 31 should be moved to article 2. However, the adoption of that course could lead to difficulties. Among other problems, the definition of State property might well conflict with that of State archives, since State property included, among other things, State archives.

13. The CHAIRMAN observed that those issues could be dealt with independently of article 1 and the Greek oral proposal to amend that article.

14. Mr. TÜRK (Austria) pointed out that none of the proposals so far made with regard to article 1 affected the substance; he therefore proposed that they should all be referred to the Drafting Committee.

15. Mr. CONSTANTIN (Romania) supported that proposal, but considered that the Committee should first have the benefit of the views of the Expert Consultant on the matter.

16. Mr. BEDJAOUI (Expert Consultant) said that there was some merit in the suggestion to merge articles 1, 7, 18 and 30. It had, however, the drawback of ignoring the fact that Parts II, III and IV of the draft articles each dealt with a separate and autonomous topic. It was worth recalling in that connection that there was yet another related topic, that of succession of States in respect of treaties, which had been made the subject of a separate Convention, namely, the 1978 Vienna Convention on Succession of States in Respect of Treaties.[1] In his view, the four different aspects of State succession should receive separate treatment and he accordingly doubted the wisdom of the proposed merger of articles 1, 7, 8 and 30.

17. Regarding the Austrian suggestion to insert the word "State" before the word "debts" in article 1 and in the title of the draft convention, he confirmed that, as far as the French version was concerned, no such insertion was necessary because the expression *"d'Etat"* qualified all three terms *"biens"*, *"archives"* and *"dettes"*. Should there be any problems of concordance with the other language versions, the matter should be left to the Drafting Committee.

18. Lastly, he saw no objection to the proposed insertion of the words "towards other subjects of international law" after the word "debts" in article 1 and in the title of the draft convention.

19. On the whole, however, he favoured retaining article 1 as proposed by the International Law Commission.

20. Mr. PHAM GIANG (Viet Nam) agreed with the Expert Consultant that it was necessary to preserve the autonomy of the various parts of the convention. He therefore urged that articles 1, 7, 18 and 30 should be retained in their present form.

21. Mr. ROSENSTOCK (United States of America) supported the Greek proposal to merge articles 1, 7, 18 and 30 and urged that it should be put to the vote. The proposal involved a drafting improvement. In his delegation's view, article 1 was not absolutely essential but could be useful and there was merit in trying to improve it.

22. Should the Greek proposal be adopted, the actual wording of the revised article 1 should be left to the Drafting Committee. If the proposal was rejected, the opportunity to make a drafting improvement would have been lost but no grave consequences would follow.

23. Mr. SHASH (Egypt) said that, before voting on the proposal of the Greek delegation, he would wish to have before him the exact wording proposed for the consolidated article. The matter was not at all simple and the language adopted might well affect the application of the provisions of the various articles. He himself had attempted to draft such a consolidated article but had found it difficult to devise wording that would not affect the legal implications of a number of articles.

24. In conclusion, he urged that the various proposals made, all of which related to form rather than substance, be referred to the Drafting Committee.

25. The CHAIRMAN suggested that the Committee should take a vote solely on the principle of the merger proposed by the Greek delegation. If the proposal was accepted in principle, the question of the choice of wording would be left to the Drafting Committee. If the proposal was rejected, article 1 would be retained and Parts II, III and IV would each commence with an introductory article on the scope of their articles.

26. Mr. MEYER LONG (Uruguay) opposed the proposal to merge articles 1, 7, 18 and 30 and urged that the structure proposed by the International Law Commission should be retained. He counselled caution in attempting to shorten the draft convention by merging different provisions; something could easily be lost in the process and there was usually no harm in repetition.

27. Mrs. TYCHUS-LAWSON (Nigeria) also opposed the proposed merger. She failed to understand what it aimed to achieve. If accepted, it would have the unwelcome effect of removing a useful introductory article from Parts II, III and IV.

28. Mr. GÜNEY (Turkey) said that, following the explanation given by the Expert Consultant, his delegation opposed the Greek proposal.

29. Mr. A. BIN DAAR (United Arab Emirates) said that the Greek proposal did not involve any question of substance. He therefore saw no reason for the Committee to vote on it. He suggested that it should be referred to the Drafting Committee and that the Committee of the Whole should vote on the matter only after the Drafting Committee had reported back to it.

30. Mr. MEYER LONG (Uruguay) said that adoption of the Greek proposal would create difficulties in connection with articles 2 to 6; it would seem necessary to

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[1] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

mention those articles as well in some form in the proposed consolidated article.

31. Mr. ROSENSTOCK (United States of America) stressed that the Committee would be voting only on the principle of the merger proposed by the Greek delegation. There would be no question of committing the Drafting Committee to any particular form of words. In fact, the Drafting Committee might well find that little change of language was required in the text of article 1 in order to cover the contents of the three other articles as well.

32. Mrs. BOKOR-SZEGÖ (Hungary) said that it was difficult to take a vote on the proposed merger at a time when the Committee had not yet adopted the articles on the use of the three terms "State property", "State archives" and "State debts".

33. Mr. AL-KHASAWNEH (Jordan) said that, from a legal drafting standpoint, he was opposed to the Greek proposal, which would lead to the adoption of unsuitable wording.

34. Mr. KIRSCH (Canada) urged the Committee to take a vote on the question of the principle of the proposed merger and not dwell on questions of form, which should be left to the Drafting Committee.

35. Mr. GUILLAUME (France), supporting the previous speaker, said that, if the proposal to merge the four articles in question was rejected, he would be obliged to vote against article 1. His delegation considered it inappropriate to retain all four articles in the draft convention; there should be a single article on scope in Part I and no provision on the scope of the articles elsewhere or, alternatively, no article in Part I but separate articles in Parts II, III and IV.

36. The CHAIRMAN put to the vote the principle of the oral proposal of the Greek delegation to merge articles 1, 7, 18 and 30, on the understanding that it would be left to the Drafting Committee to formulate the actual wording of the consolidated article.

The principle of the Greek oral proposal to merge articles 1, 7, 18 and 30 was rejected by 42 votes to 20, with 3 abstentions.

37. Mr. TÜRK (Austria) said that, before a vote was taken on the International Law Commission's text of article 1, he wished to revise his delegation's drafting amendment. It concerned the English text, since there was no ambiguity in the French or Spanish versions.

38. He proposed that, in the English text, the word "State" should be added before both the words "archives" and "debts". He also thought that it might be useful to add, at the end of article 1, the following phrase: "as defined in articles 8, 9 and 31 respectively". He felt that his suggestion might be referred to the Drafting Committee without a vote in the Committee.

39. Mr. SHASH (Egypt), speaking in explanation of vote, said that his delegation had abstained in the vote on the principle of merging articles 7, 18 and 30 into article 1. Although it was an attractive proposal from the drafting standpoint, there was a possibility that it might have implications for the other general provisions and the final clauses.

40. With regard to the latest Austrian proposal, he was in favour of adding the word "State" but did not consider the additional concluding phrase to be necessary.

41. The CHAIRMAN invited the Committee to vote on article 1, as proposed by the International Law Commission.

Article 1, as proposed by the International Law Commission, was adopted by 51 votes to 3, with 14 abstentions, and referred to the Drafting Committee.

42. Mr. LAMAMRA (Algeria) regretted that the Committee had been unable to follow the suggestion made by the delegation of Greece and other delegations, including his own, that a small group should be set up to consider the desirability of merging certain articles and to make appropriate recommmendations to the Committee. At the current meeting, the Committee had been asked either to take a decision on the proposal, without an evaluation of its merits, or to refer a number of suggestions to the Drafting Committee and thus delay that Committee's work on the preamble and final clauses of the draft convention.

43. His delegation had therefore voted against the Greek proposal and in favour of the International Law Commission's text of article 1.

44. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the sensible drafting proposal made by the Greek representative. Since that proposal had been rejected, his delegation had voted against the International Law Commission's text of article 1 because there were three similar provisions already in the draft convention.

45. Mr. GUILLAUME (France) said that his delegation had also voted in favour of the Greek proposal and subsequently against the International Law Commission's text of article 1, for the reasons which had been given by the United Kingdom representative. The issue was purely a matter of drafting and his delegation was not opposed to article 1 as such.

46. Mr. A. BIN DAAR (United Arab Emirates) said that he had voted against the proposal to merge certain articles because he did not consider it appropriate to take a vote on the matter before having studied its technical and legal implications. The International Law Commission's proposal for the structure of the draft convention as a whole should also be taken into account. The matter could have been considered by the Drafting Committee.

47. His delegation had therefore voted in favour of article 1 as proposed by the International Law Commission.

48. Mr. AL-KHASAWNEH (Jordan) said that his delegation had voted against the Greek proposal, since it involved a matter of taste in a specific case of legal drafting rather than established drafting technique.

49. Mr. NDIAYE (Senegal) said that his delegation had been unable to vote in favour of the proposal to merge certain articles. That merger would have been an ideal way of avoiding repetition. However, the proposal had not been examined sufficiently to determine the possible difficulties it might entail.

Articles 7, 18 and 30 (Scope of the articles in the present Part) (*concluded*)*

50. The CHAIRMAN said that, since the proposal to merge articles 1, 7, 18 and 30 had been rejected and the International Law Commission's text of article 1 had been adopted, he would take it that articles 7, 18 and 30 might also be considered adopted, and referred to the Drafting Committee.

It was so decided.

Article 3 (Cases of succession of States covered by the present articles)

51. Mr. ECONOMIDES (Greece) said that article 3, which expressly provided that the draft convention applied only to successions of States that were legitimate from the viewpoint of international law, was the most important article proposed by the International Law Commission. It responded to a fundamental international concern for morality and a manifest requirement of justice and international law. Cases of succession brought about illegally by pure force, by acts of aggression or by unilateral *faits accomplis*, in violation of international law and the principles of the Charter of the United Nations, could not have any legal effects. Illegal use of force and illegal military occupation could not give rise to a succession of States in conformity with international law.

52. The rule laid down in article 3 was the essential corollary of an important rule of general international law, namely, the non-recognition of illegal acquisition of territory. His delegation fully suported article 3 as proposed by the International Law Commission.

53. Mr. PAREDES (Ecuador) endorsed the remarks of the Greek representative. In the view of his delegation no legal effects must stem from the use of force.

54. Mr. ABED (Tunisia) also endorsed the Greek representative's statement.

55. Mr. LAMAMRA (Algeria) expressed his delegation's full support for the text of article 3, which he hoped the Committee might adopt by consensus.

Article 3, as proposed by the International Law Commission, was adopted and referred to the Drafting Committee.

Article 4 (Temporal application of the present articles)

Article 4, as proposed by the International Law Commission, was adopted and referred to the Drafting Committee.

Article 5 (Succession in respect of other matters)

56. Mrs. BOKOR-SZEGŐ (Hungary) requested the Expert Consultant to furnish an explanation of article 5. She did not understand what the relationship would be, on the basis of that article, between the present draft convention and the 1978 Vienna Convention on Succession of States in Respect of Treaties for a State which was a party to both instruments.

57. Mr. BEDJAOUI (Expert Consultant) said that in article 5 the International Law Commission had not wished to pronounce either for or against any assumption which might arise on matters other than property, archives and debts. It had felt that other topics such as succession in respect of legislation and the problems of nationality did not fall entirely under public international law and it had not proposed to regulate them in the present draft convention. Throughout its work the International Law Commission had taken each State succession topic in turn; it had taken treaties as a topic without reference to their content, and it had then passed on to other topics. The question arose as to what should be done when reference was made to the contents of treaties, particularly in connection with State debts.

58. Article 5 appeared to indicate that the rules in the 1978 Vienna Convention had nothing to do with the present draft convention. That was indeed the case, but a bridge must nevertheless be constructed between the two instruments in respect of the contents of treaties to which successor States succeeded in application of the 1978 Convention. However it was perhaps better not to enter into the problem of the contents of treaties. There were rules providing for succession or non-succession to a treaty and each particular case involved its own consequences.

59. Mrs. BOKOR-SZEGŐ (Hungary) said that the Expert Consultant's statement had confirmed her doubts about article 5. Leaving open the matter to which she had referred could give rise to serious problems, especially in connection with the settlement of disputes. How would the International Court of Justice or any other arbitration body know whether it should take the present draft convention, or the 1978 Vienna Convention, as the basis for its decision?

60. Mr. KIRSCH (Canada) said that the representative of Hungary had raised a most important point on which the Committee should reflect before taking a decision on article 5.

61. Mr. MURAKAMI (Japan) said that during the discussion of article 31, at the 32nd meeting, his delegation had already indicated its position on the question just raised by the representative of Hungary. In its view, the matter should be resolved in accordance with article 30, paragraph 3, of the 1969 Vienna Convention on the Law of Treaties,[2] which provided that the earlier treaty applied only to the extent that its provisions were compatible with those of the latter treaty.

62. Mr. SHASH (Egypt) said that a solution could be found by reference to the 1969 Vienna Convention on the Law of Treaties, article 30 of which enunciated a general rule on the application of successive treaties relating to the same subject-matter. His delegation therefore had no difficulty in accepting article 5 as proposed by the International Law Commission.

63. Mr. LAMAMRA (Algeria) said that his delegation saw article 5 as being oriented towards the future; a reading of the International Law Commission's com-

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* Resumed from the 1st, 18th and 30th meetings respectively.

[2] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

mentary on article 5 made it clear that the Commission had not wished to prejudge future decisions concerning State succession in respect of matters covered neither by the 1978 Vienna Convention, nor by the present draft convention, such as boundary and other territorial régimes. A similar precautionary provision had been included in the 1978 Convention because it had been known at that time that work was being undertaken by the Commission on the question of State property, archives and debts.

64. The point raised by the representative of Hungary was a valid one. Perhaps that representative could propose a formula that would provide the necessary bridge between the present draft convention and the 1978 Convention.

65. Mr. MIKULKA (Czechoslovakia) said that the provisions of the 1978 Vienna Convention relating to separation of part of the territory differed from article 35 of the present draft convention. In accordance with which convention, therefore, would an international debt claim be settled?

66. It was important, in his view, to reflect on the point raised by the representative of Hungary taking a decision on article 5. Clarification of the International Law Commission's text of article 5 was perhaps more important than the production of a new text.

67. Mr. GÜNEY (Turkey) said that the Committee would need more time to study the implications of the point raised by the representative of Hungary.

68. The CHAIRMAN suggested that further consideration of article 5 should be deferred until specific proposals were forthcoming for the solution of the problem raised by the representative of Hungary.

It was so decided.

Article 6 (Rights and obligations of natural or juridical persons)

69. Mr. FAYAD (Syrian Arab Republic) said that his delegation wished to withdraw its amendment (A/CONF.117/C.1/L.36), while reserving the right to submit another amendment in the form of a new article.

70. Mr. PIRIS (France) said that his delegation supported the substance of article 6. He recalled, however, that one of the major objections raised to the proposal to insert in the draft convention a new article 23 *bis*, (A/CONF.117/C.1/L.28), which had been rejected, had been that the substance of that proposal was contained in article 6. He wished therefore to place on record his delegation's understanding that article 6 contained all the elements of the proposed new article 23 *bis*.

71. Bearing in mind the basic purpose of article 6, he believed that the wording of the article might be improved by adding at the end the words ". . . other than the predecessor State and the successor State".

72. Mr. MIKULKA (Czechoslovakia) said that he could not support the suggestion of the representative of France, since it could lead to the conclusion that article 6 did not cover all categories of natural and juridical persons. That was surely contrary to the basic point of that provision.

73. Mr. THIAM (Senegal), associating himself with the remarks of the previous speaker, said that the French proposal could open the door to the interpretation that the future convention could prejudge any other question affecting the predecessor and the successor States, which seemed to be quite at variance with the title of the draft convention.

74. Mr. PIRIS (France) observed that there was no contradiction in his delegation's proposal, the purpose of which was to indicate that the draft convention could affect only the rights and obligations of the predecessor State and the successor State. The point raised by the representative of Senegal could be answered by reference to article 5 which indicated that the draft convention related only to State property, archives and debts.

75. His delegation's proposal would therefore not prejudice the rights and obligations of any natural or juridical person, or of third States; that was entirely in conformity with the purpose of the draft convention, as his delegation understood it.

76. He failed to see how problems could be caused by what was in fact simply a drafting proposal.

77. Mr. FAYAD (Syrian Arab Republic) said that at first sight the amendment proposed by the French representative appeared to be in conflict with article 6, as proposed by the International Law Commission, whose commentary made it clear that the article referred to the rights and obligations of entities not subject to international law. The French amendment could lead to a contrary interpretation of article 6.

78. Mr. ROSENSTOCK (United States of America) said that the International Law Commission's commentary made it clear that article 6 did not and could not relate to predecessor and successor States; the draft convention would otherwise be virtually meaningless. The only point at issue was whether an element inherent in the text should be stated explicitly or whether the explanation in the International Law Commission's commentary was deemed sufficient.

79. The French proposal was therefore purely a drafting matter which should be referred to the Drafting Committee.

80. Mr. BEDJAOUI (Expert Consultant) said that, if he understood the French proposal correctly, it could give rise to *a contrario* interpretations. The purpose of article 6 was not to prejudice the rights and obligations of private natural or juridical persons under the draft convention, whereas the French proposal would have the opposite effect.

81. Mr. ROSENSTOCK (United States of America) said that the Expert Consultant appeared to have missed the point. The issue could not be whether or not a natural or juridical person of the predecessor or the successor State was covered by article 6, because if they were not covered, there would be no point to the article. The problem was that the predecessor State and the successor State might be thought to be juridical persons, and the question then arose as to whether or not those States would be covered. There was no question of trying to cover the nationals or juridical entities of those States.

82. The problem would be solved either by adding to the article the words proposed by the French rep-

resentative or by recognizing, in the light of the history of the text, the International Law Commission's commentary and the principle of effectiveness, that the predecessor and successor State as such were not included in the scope of article 6. The article did not relate in any way to non-State juridical entities or persons and it would make no sense if it did.

83. Mr. PIRIS (France) said that his proposal appeared to have been misunderstood. He had suggested adding the words "other than the predecessor State and the successor State" at the end of article 6. The purpose of the convention was to prejudge the rights and obligations of the predecessor and successor States which would ratify the proposed convention. The predecessor State would be obliged, under the convention, to relinquish certain rights for the benefit of the successor State. Those rights would therefore be affected by the convention. As article 6 was currently worded there was a risk that the opposite would be the case. The article did not affect the rights and obligations of all persons, but only the juridical persons of the predecessor and successor States.

84. Mrs. BOKOR-SZEGÖ (Hungary) said that the concerns of the French delegation were groundless. The entire convention dealt with States as subjects of international law and not as juridical persons, as subparagraph 1(*a*) of article 2 confirmed, since a juridical person could clearly not be responsible for the international relations of a territory.

85. She therefore supported article 6 as it stood.

86. Mr. BEDJAOUI (Expert Consultant) said that he had understood the French amendment to be "other than those of the predecessor State and the successor State". If, however, the amendment was "other than the predecessor State and the successor State" the question was quite different. The predecessor and successor States were both exclusively considered as subjects of international law as defined in article 2, and not as juridical persons. As far as he was concerned, therefore, the ambiguity was resolved and article 6 could remain as drafted.

87. Mr. PIRIS (France) said that, if the interpretation given by the representative of Hungary and the Expert Consultant were to be accepted, there was another *a contrario* in article 6 as drafted by the International Law Commission, under which the convention could prejudge the rights and obligations of subjects of international law which were not the predecessor or the successor States. In its present form article 6 covered all natural or juridical persons whether they were subjects of international law or not.

88. Mr. LAMAMRA (Algeria) said that his delegation was not convinced by the usefulness of the French proposal. Article 6 as it stood was clear, and any addition would create restrictions or give rise to interpretations which had not been the intention of the International Law Commission.

89. Mr. NDIAYE (Senegal) said that the additional wording proposed by France had confirmed his view that the interpretation of the existing text was to exclude the predecessor and successor States as possible juridical persons. However there was still a problem with the word "any" which could not be solved by a reference to article 5.

90. The CHAIRMAN suggested that the Committee should vote on article 6 as proposed by the International Law Commission.

91. Mr. KIRSCH (Canada), speaking on a point of order, said he believed the Committee could adopt the text without a vote.

Article 6, as proposed by the International Law Commission, was adopted and referred to the Drafting Committee.

92. Mr. PIRIS (France) said that his delegation had been happy to approve article 6 without a vote in the light of the Committee's interpretation of the principles embodied in the proposed new article 23 *bis* (A/CONF.117/C.1/L.28) and the interpretation that article 6 clearly and fully covered the rights of all third parties, including third States.

New article 6 bis (The present convention and permanent sovereignty over natural wealth and resources)

93. Mr. ROSENSTOCK (United States of America) suggested that consideration of the new article 6 *bis* proposed by Brazil (A/CONF.117/C.1/L.43) should be deferred for the time being, since it would undoubtedly be lengthy and delay other work.

94. Mr. COUTINHO (Brazil) said that the aim of his delegation in submitting its proposal had been to include in the draft convention a provision applicable to all the cases of succession of States under consideration. That provision dealt with a matter already covered in the 1978 Vienna Convention. However, in view of the Committee's acceptance of article 1, paragraph 4, article 26, paragraph 7, and article 36, paragraph 2, his delegation believed that the proposal for a new article 6 *bis*, which had been submitted in a spirit of compromise, might now be superfluous. It accordingly withdrew the proposal.

New articles 12 bis (Preservation and safety of State property) *and 24* bis (Preservation and safety of State archives) (*continued*)*

95. Mr. A. BIN DAAR (United Arab Emirates) said that it would be preferable to consider the proposed new articles 12 *bis* (A/CONF.117/C.1/L.59) and 24 *bis* (A/CONF.117/C.1/L.50/Rev.1) together, since the texts were basically the same, one referring to State property and the other to State archives.

96. He pointed out that the following changes should be made in the text of the two articles: the words "this convention" should be replaced by "the articles of the present Part" and the preposition "to" in the phrase "an obligation to the predecessor State" should be replaced by a more suitable preposition, such as "of" or "upon".

97. Mr. ROSENSTOCK (United States of America) said that those changes would be appropriate if the two articles were to be inserted in the places proposed. However, it would be just as simple to have one such article covering both Parts II and III of the draft con-

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* Consideration of article 24 *bis* was resumed from the 39th meeting.

vention. That was a matter which the Drafting Committee could deal with, together with the question of the most suitable preposition to use.

98. Mr. PIRIS (France) said that the Drafting Committee might also review the French translation of the proposed new articles, and particularly of the expressions "consequential obligation" and "take all measures".

99. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation supported the aim of the amendments under consideration. It favoured inclusion of such a provision in the draft convention, but with a more general wording. The way in which the duty of the State to be a good caretaker of State property and State archives was expressed caused his delegation some difficulty.

100. If there was to be only one article in the general part of the convention, his delegation would prefer its opening phrase to read "For the purpose of the implementation of the relevant provisions of this convention".

101. The corrections made in the text proposed by the United Arab Emirates appeared to have introduced new concepts of obligation and transfer. He was not certain whether the idea of obligation exactly corresponded to and implied the consequences of the rights referred to in article 20. There were, of course, obligations which corresponded to such rights, but they were more concerned with timing. His delegation's doubts were increased by the concentration on the consequential obligation to prevent damage or destruction. The words "any part of" were vague and could give rise to unnecessary misunderstandings. They should therefore be deleted.

102. Mr. A. BIN DAAR (United Arab Emirates) said that, as far as the idea of obligation was concerned, the draft convention itself dealt with obligations. His delegation therefore saw no contradiction in the provisions it had proposed. It had no objection to the deletion of the words "any part of" if that could result in his delegation's proposal being adopted by consensus.

103. His delegation would prefer to have the provision in two separate articles, rather than in a single article in Part I.

104. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation agreed with the general purpose of the proposed new articles, but had difficulties with some of the wording. It would welcome the deletion of the words "any part of". It had doubts about the time element embodied in the proposal. The intention of the sponsor was obviously to protect the State property and archives while they were still in the possession and under the control of the predecessor State but, as the article was constructed, it appeared that protection was required only after the State property and archives had passed to the successor State. That problem might be solved if the words "pass to the successor State" at the end of the paragraph were replaced by "should pass to the successor State".

The meeting rose at 1 p.m.

41st meeting

Wednesday, 30 March 1983, at 3.20 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 5 (Succession in respect of other matters) (*concluded*)

1. The CHAIRMAN invited the Committee to adopt article 5, as proposed by the International Law Commission, without a vote.

It was so decided.

2. Mrs. BOKOR-SZEGÖ (Hungary) said that she wished to place on record that her delegation found the wording of article 5 as adopted unclear in terms of its relationship to the 1978 Vienna Convention on Succession of States in respect of Treaties[1] and to reserve the right of her Government to reach its own conclusion on the question in a given case.

3. The CHAIRMAN noted that the Committee had concluded its consideration of article 5.

Article 2 (Use of terms)

4. The CHAIRMAN noted that, in addition to the basic proposal of the International Law Commission, the Committee had before it an amendment proposed by the United Kingdom (A/CONF.117/C.1/L.56).

5. Mr. EDWARDS (United Kingdom), introducing his delegation's amendment, recalled that his delegation had already explained on a number of occasions that it had technical problems with a number of the articles of the draft convention as proposed by the International Law Commission. Those problems were associated with the practice followed by the United Kingdom in relation to its dependent territories.

6. The Government of the United Kingdom and each of the governments of the dependent territories had an entirely separate juridical status. Thus, the government of a dependent territory owned its own property, held

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[1] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

its own archives and contracted its own debts. Those were entirely separate from the property, archives and debts of the Government of the United Kingdom. It followed that when a United Kingdom dependent territory attained independence it simply continued to own its own property, to manage its own archives and to be responsible for its own debts. The fact of the attainment of independence did not as such affect that situation in any way.

7. In a number of important respects, the draft articles already adopted by the Committee did not adequately reflect that practice. For example, if article 14, paragraph 1(*a*) was to work properly in practice, the predecessor State referred to in that provision would be the government of the territory concerned rather than the Government of the United Kingdom. On the other hand, the predecessor State referred to in article 36, paragraph 1, would have to be the Government of the United Kingdom.

8. The International Law Commission's commentary on the article did not give a clear idea of the intention of the Commission in that regard. From paragraph (13) of the commentary to article 14 it appeared that the intention was that property belonging to the government of the territory concerned should not be covered by the draft articles. At the same time, in paragraph (38) of the commentary to article 36 there seemed to be some doubt as to whether debts contracted by the governments of British dependent territories were covered by the draft articles; the last sentence of that paragraph stated that they "might be outside the scope of the draft articles".

9. His delegation considered it important that those problems should be faced and resolved in as clear a manner as possible. It was for that reason that it had proposed its amendment to article 2. The amendment provided that, to the extent that the functions relating to a matter regulated by the convention were undertaken by the government of the territory concerned, that government should be regarded as the predecessor State for the purposes of the convention; however, to the extent that the government of a metropolitan territory undertook those functions, that government should be treated as the predecessor State. In that way the amendment would remove the anomalies which he had described.

10. Some delegations might argue that the purpose of the Conference was to produce a convention which would apply for the future and not to the past and that hence it would be pointless to attempt to amend the draft in order to reflect United Kingdom practice. His delegation could not accept that argument because, first, the practice described had been applied to almost 40 countries which had formerly been dependent territories of the United Kingdom and, in his delegation's view, any draft convention which was not exclusively intended to represent a progressive development of international law would be defective if it failed to reflect that practice. Second, his delegation considered the practice to be a natural and sensible one to follow in such matters; it had been found to be successful in the past and was thus very likely to be followed in the few cases remaining to be dealt with in the future.

11. His delegation remained flexible with respect to the precise wording to be used in the proposed amendment and would welcome the views of delegations and any suggestions for improvements.

12. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation was unable to agree to the United Kingdom amendment on many grounds. The amendment referred to the use of terms in the internal law of certain States and was therefore completely out of place in an article defining the use of terms in an international convention. The amendment was also incorrect in referring to the functions regulated by the provisions of the convention, since the draft under consideration determined the consequences of the succession of States but in no sense regulated functions. Lastly, the amendment envisaged a situation in which the State responsible for the international relations of a dependent territory undertook certain functions of the newly independent State. Such a situation was obviously inconceivable, for when the newly independent State came into existence as a sovereign State it assumed its own functions, rights and obligations in accordance with international law.

13. For those reasons, his delegation considered the United Kingdom amendment completely unacceptable and supported the basic draft.

14. Mrs. BOKOR-SZEGÖ (Hungary) said that most of the reasons which made it impossible for her delegation to support the United Kingdom amendment had been given in the statement just made by the representative of the Soviet Union. The amendment was not acceptable and would appear to conflict with the definition of succession of States as given in article 2.

15. She asked the Expert Consultant a question relating to article 2 as a whole. Should not the meaning of "State property", "States archives" and "State debts", terms which recurred throughout the convention, also be defined in the article on the use of terms? For example, she was concerned about the word "property"; if that term was used in a definite meaning in Part II without being defined in the General provisions there might be difficulties with respect to its use in Part IV, where articles 35 and 36 spoke of "property, rights and interests". Since it was her understanding that a balance was intended between Parts II and IV, she felt that there would be a juridical lacuna if the same term was not clearly seen to be used in the same way in both Parts. Accordingly the solution to the problem would be to incorporate definitions of "State property", "State archives", and "State debts" in article 2.

16. Mr. KIRSCH (Canada) said that it had not been his intention to comment in detail on the amendment submitted by the United Kingdom. However, his delegation understood the special legal situation covered by the amendment and hoped that the Conference would take it into consideration and find a generally acceptable solution.

17. Article 2 as it stood raised a problem associated with the criterion used in subparagraphs (*a*) and (*d*) of paragraph 1 for defining a succession of States, namely, that of the replacement of one State by another in the responsibility for the international relations of the ter-

ritory. His delegation questioned the appropriateness of that criterion in the context of the draft convention.

18. The definition of the meaning of "succession of States" given in article 2 was identical to that given in the corresponding provision of the 1978 Vienna Convention on Succession of States in Respect of Treaties and was based on the premise that the assumption of responsibility for international relations was sufficient evidence of the substitution of one State, the successor, for another, the predecessor, in a territory. He pointed out, however, that responsibility for international relations was not directly linked to the succession to State property or debts; whereas treaties sprang from international relations and were governed by international law, State property and debts were subject to essentially national management and were covered by internal law. It could happen that a State attained independence while leaving responsibility for its international relations to another State. In such circumstances the succession of States to State property and debts would not take place under the terms of the draft articles. Nor indeed would the act of entrusting responsibility for the international relations of a territory to another State in itself trigger a succession of States within the meaning of the draft articles.

19. His delegation was therefore inclined to believe that the classical criterion of assumption of effective control over the territory in question, confirmed as necessary by formal international recognition of its effectiveness and legality, would probably better reflect both the true course of events and actual international practice than did the existing text.

20. Although the International Law Commission explained in paragraph 2 of its commentary why it had opted for the wording "in the responsibility for the international relations of territory" in preference to certain others, and his delegation appreciated the reasons for that choice, there was no reference to the questions which his delegation had just raised. He would be grateful if the Expert Consultant would indicate whether the Commission had discussed the issue and, if so, what conclusions it had reached.

21. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation viewed with great interest the amendment to article 2 proposed by the United Kingdom. In essence, the United Kingdom delegation in that amendment was attempting to draw a distinction between the government of the territory to which the succession of States related and that of the State responsible for its international relations as regards the functions regulated by the draft convention. Her delegation took the view that such a distinction would be misleading.

22. Such a distinction was valid only to the extent that the "government" of the dependent territory and that of the metropolitan Power operated from two geographically distinct territories; it was for that reason that, where there was a need to differentiate between the property or archives belonging to the territory as distinct from those belonging to the metropolitan Power, the International Law Commission had made that distinction by relating such property or archives to the territory in question, as in article 14, paragraph 1(*a*), to which the representative of the United Kingdom had referred.

23. It was common knowledge that the "government" of such a territory had no international legal personality but was in fact an agency of the government of the metropolitan Power, enabling that Power to administer the territory on a day-to-day basis. Indeed, the dependent territory was part of the dominion of the metropolitan Power and in most cases was in the charge of a colonial secretary, who was a minister in the government of the metropolitan Power and presided over the colonial office responsible for the policies of that Government with respect to colonies or dependent territories.

24. For all practical purposes, therefore, all executive and legislative functions in such a territory were performed by the relevant organs of the metropolitan Power through the agency of the "government" of the territory. For instance, in cases where the draft articles called for recourse to the internal law of the predecessor State for the purpose of determining which State property or archives passed to the successor State, that predecessor State would invariably be the metropolitan country.

25. The United Kingdom proposal would also give rise to a problem of interpretation: how and by whom would the extent of the responsibility of the "government" of the dependent territory and the metropolitan government for the functions regulated by the convention be determined? The answers to those questions might rely on subjective criteria rather than on the objective and universally applicable criteria contained in the definitions of article 2 as it stood.

26. Furthermore, even on the assumption that the practice adopted by certain colonial Powers was a valid guide to be followed in the event of a succession of States, she pointed out that what happened was not merely that the "government" responsible for the local administration of the territory was replaced. What in fact happened was that the predecessor State, namely, the metropolitan State, was replaced by the successor State, namely the newly independent State.

27. For the reasons stated, the Nigerian delegation believed that the United Kingdom amendment was not only unnecessary but would lead to a great deal of confusion. There was no such thing as a legally separate government of a dependent territory; the only distinction was geographical and not legal or political. Besides, the amendment sought to introduce a restrictive qualification to a definition which should be of universal application.

28. She added that, of the provisions of article 2 as it stood in the Commission's draft, paragraph 1 was acceptable to her delegation. However, although her delegation understood the underlying intention of paragraph 2 as explained in paragraph (8) of the commentary, it doubted the value of such a provision. The draft convention dealt with rules of international law and her delegation did not perceive any danger in a State's using in its internal law the definitions given in article 2. Paragraph 2 of that article on the other hand was potentially ambiguous as it might be interpreted in the future to mean that definitions and terms as used by States might be substituted for the definitions of article 2, paragraph 1.

29. In her delegation's opinion, paragraph 2 could safely be deleted without damage to the article as a whole. Alternatively, if the Committee should not wish to delete paragraph 2, she suggested that, at the end of the paragraph, the phrase "in regard to their internal law and usages" might be added, subject of course to drafting refinements.

30. Mr. MUCHUI (Kenya) said that he wished his delegation to be associated with the comments made by the representative of Nigeria. His delegation was unable to support the United Kingdom proposal. First, it was not quite clear what the term "a legally separate Government of a territory" really meant. He was not convinced that, for example, the Governments of former British Protectorates had been separate from the United Kingdom Government in any way other than geographically. As he understood it, the chief executive of the colonial administration, in most cases the Governor of the territory, had been directly answerable to the Colonial Secretary, the Minister of the United Kingdom Government responsible for colonies. In those circusmtances, it was not possible to assert that the government of the colony was legally separate. On the contrary, it was completely bound to the United Kingdom Government.

31. It was true that colonial administrations owned property, held archives and contracted debts, but they performed those functions on behalf of the metropolitan government. There was the example of government vehicles: as he recalled the situation, all vehicles in his own country which had been owned by the colonial government had borne the legend OHMS (On His (Her) Majesty's Service) on their registration plates. How then could that colonial administration be regarded as a separate government?

32. Even if it was at all possible to regard colonial administrations as legally separate governments, the introduction of an amendment of the kind proposed by the United Kingdom would lead to innumerable difficulties in the interpretation of the future convention. For example, who was to determine the delimitation of the respective functions of the colonial administration and the metropolitan Government? There was also the danger that the provision proposed by the United Kingdom might lend itself to extension to cover some federal systems in which the governments of the component States were largely independent.

33. For all those reasons, his delegation could not accept the United Kingdom amendment.

34. Mr. TÜRK (Austria) said that, while not well-versed in the constitutional intricacies of the British Empire, he could sympathize with the reasons which had prompted the United Kingdom delegation to propose its amendment. Nevertheless, he preferred the article in the form proposed by the Commission.

35. An earlier speaker had suggested that a government could not be treated in the same way as a State, and his delegation felt that the United Kingdom amendment might accordingly be reworded in such a way as to make it clear that it was only the territory to which the succession of States related that was to be treated, for the purposes of the convention, as if it were the predecessor State. Such a modification would help to make the amendment more acceptable.

36. His delegation wondered whether, if it was thought justifiable to incorporate the ideas contained in the amendment, it might not be better to do so in a separate article rather than as an addition to paragraph 2 of article 2.

37. Mr. BEDJAOUI (Expert Consultant) said that he wished to reply to a number of points raised by earlier speakers.

38. The delegation of Hungary had suggested that problems might arise if the general provisions did not offer a definition of "State property", "State archives" and "State debts". In reply, he pointed out that article 8 contained a definition of "State property", but the commentary to the article, in its paragraph (9), made it clear that the definition applied only to Part II of the draft. The possible inclusion of a general definition was a question which the Drafting Committee might investigate.

39. Referring to the statement made by the representative of Canada, he said that at the definition level there could be no differences between a succession of States in respect of treaties and a succession of States in respect of the matters covered by the draft articles under consideration. The difficulty lay in dealing with the predecessor State's financial liabilities towards a third State in so far as they passed to the successor State. In such cases, one had to look for guidance to public international law, since the interests of a third State could not be adequately protected under public internal law alone: a successor State could not be expected to follow the public internal law of a predecessor State in order to fulfil its financial obligations to a third State. Owing to the complexity of such case it would be difficult to work out an exhaustive definition of "succession of States" simply by reference to public internal law. The succession of States was a phenomenon of international law. Besides, without it, the third State could not be protected.

40. The problem raised by the United Kingdom amendment was whether the government mentioned in the amendment had international status and capacity and, if so, what that status was. Although he was not in a position to comment specifically on United Kingdom practice, he inclined to the view that such a government was carrying out functions delegated to it by the administering Power, and thus did not possess international status or capacity. He wondered whether the amendment was not in fact seeking to define in terms of public internal law a phenomenon, namely succession of States, which properly belonged to the field of public international law.

41. The amendment stated that the government concerned should, to the extent that it had undertaken the functions regulated by the provisions of the convention, be treated as if it were the predecessor State: if, as he believed, what was involved was a delegation of authority from the metropolitan Power to the territorial government, responsibility for the international relations of that territory remained with the predecessor State. Lastly, where an administering Power was replaced at a specific point in time by a newly indepen-

dent State, there was clearly a case of succession of States, and the problem ceased to be one of definition but was rather one of establishing the date of the succession.

42. He thought, however, that there might be some possibility of finding solutions in article 2, paragraph 2, that would meet some of the preoccupations indicated by the United Kingdom in its amendment. In fact, State property and State archives could be defined in the public internal law of the predecessor State. But the same public internal law could not, of course, define succession of States itself; in other words it could not confer the status of "predecessor" State on one entity or another.

43. Mr. IRA PLANA (Philippines) said that his delegation supported the text of article 2 as proposed by the International Law Commission. The amendment proposed by the United Kingdom would, he believed, give rise to problems. The amendment stated that "a legally separate Government" of the territory to which the succession of States related should be treated for the purposes of the convention as if it were the predecessor State. Such a provision was in contradiction with paragraph 1(*b*) of article 2, which defined "predecessor State" as meaning the State which had been replaced by another State on the occurrence of a succession of States. It seemed obvious to his delegation that the government referred to in the United Kingdom proposal was merely an agency of the metropolitan government in the territory to which the succession related, and as such could be regarded as representing the metropolitan Government. In the light of those considerations his delegation was unable to accept the United Kingdom amendment.

44. Mr. SHASH (Egypt) said that, while sympathizing with the United Kingdom delegation's attempt to accommodate the convention to British practice, his delegation took the view that the solution proposed in the United Kingdom amendment gave rise to confusion and contained unacceptable legal fictions. States normally tried to accommodate their practice to the conventions which they concluded.

45. As the representative of Kenya had pointed out, the entity described in the amendment as "a legally separate Government of the territory" to which the succession of States related was in fact an agent of the Government of the colonial State. and any responsibility it might have for certain property or archives was discharged on behalf of the colonial State. If a succession of States took place, the predecessor State could be considered to have discharged its obligation to transfer that property or archives, subject to determining the date of succession in that connection. Thus the United Kingdom delegation's concerns were met without the amendment.

46. His delegation could not accept a fiction such as that of considering a government to be a State, and would support article 2 as drafted by the International Law Commission.

47. Mr. BINTOU'A-TSHIABOLA (Zaire) said that, having listened to the statements by the representatives of Nigeria and Kenya, his delegation felt that the Commission's text of article 2 was acceptable as it stood. The United Kingdom amendment would introduce an element of confusion which would create considerable difficulty from both a legal and a practical standpoint. It would have the effect of relieving the administering Power of its responsibilities as predecessor State. Nor could he accept the proposition that "government" should be equated with "State".

48. He shared the view expressed by the Expert Consultant that the government referred to in the amendment was in fact carrying out functions delegated to it by the administering Power responsible for the territory concerned.

49. Mr. BROWN (Australia) said that his delegation supported the United Kingdom amendment, and that he had difficulties in relating the articles as drafted by the International Law Commission to his country's experience. The Expert Consultant had said that, however difficult it might be to pinpoint the date of a succession, such a date did exist: in the case of Australia, however, that was not quite correct. The various colonies which made up Australia had federated around the turn of the century, but the Government of the United Kingdom had continued to exercise some responsibility for the country's external relations. Nonetheless, the colonial Governments before federation, and the Australian Government since, had been entitled to hold property, maintain archives and contract debts independently of the United Kingdom. In the period subsequent to federation Australia had evolved into a fully independent sovereign State which continued to retain constitutional links with the United Kingdom.

50. Mr. MAAS GEESTERANUS (Netherlands) said that the problems which the Commission's version of article 2 created for the United Kingdom delegation essentially derived from the fact that the Commission had based its definition on one pattern of State succession.

51. In the context of the United Kingdom amendment the question was not whether the territory concerned was, or had been, politically and constitutionally subordinated to a metropolitan authority, but whether it was, or had been, a separate legal entity which held its own property and contracted its own debts on the same footing as if it were a State. Where the territory concerned had been a separate legal entity and had then become independent there was no question of the extinction of rights which it already possessed. The Commission's definition did not, therefore, apply in principle to a large number of cases of State succession.

52. In conclusion, he said that his delegation supported the United Kingdom amendment but doubted whether a solution could be found within the General provisions of the draft. In any case, some way should be sought to accommodate the ideas contained in the United Kingdom amendment, even if the amendment itself did not meet with general acceptance.

53. Mr. PIRIS (France) said that the comments made by Canada in 1981 on the definition of "succession of States" in article 2, paragraph 1(*a*) (see A/CONF.117/5, p. 59) should be borne in mind in reaching a decision on the article. In particular, there were grounds for believing that it was inappropriate to apply to the draft articles on State succession in respect of State prop-

erty, archives and debts the criterion for a succession of States used in the 1978 Vienna Convention, which was that a succession took place when there was a transfer of responsibility for the international relations of territory. The relevant suggestions made by Canada in its comments should be carefully considered.

54. Referring to the amendment submitted by the United Kingdom, he said that, although French constitutional practices differed from those of the United Kingdom, that country's experience in the field of succession of States could not be ignored.

55. As he understood the comments made by the Expert Consultant, one type of succession occurred when the government of the territory concerned, prior to the succession, had an international capacity for certain purposes. His delegation felt, however, that in such a case it was surely more appropriate to refer to continuity rather than to succession as defined in paragraph 1(*a*) of article 2. On the other hand, if the government of the territory had not had such international status a succession could be said to take place but, even there, the case did not seem to fit the criterion in paragraph 1(*a*), since property, archives or debts belonging to an overseas territory remained in that territory after it achieved independence.

56. In conclusion, he said that the United Kingdom amendment was a useful clarification, though it might perhaps be improved by the Drafting Committee. If the amendment should not be adopted, however, the Commission's draft of article 2 might be construed as covering the points dealt with in the United Kingdom amendment by virtue of the provision in paragraph 2.

57. Mr. MIKULKA (Czechoslovakia) associated himself with the views expressed by the Expert Consultant and with the reasons given by the Soviet representative for finding the United Kingdom amendment unacceptable.

58. With reference to the point raised by the Hungarian delegation concerning the possibility of including definitions of "State property", "State archives" and "State debts" in article 2, he suggested that the Committee, when adopting article 2, should request the Drafting Committee to incorporate those definitions in the article and to settle any consequential drafting problems. Such a course would also dispose of the problem which his delegation had mentioned at the preceding meeting in connection with article 1.

59. Mr. BEDJAOUI (Expert Consultant) said that in the statement which he just made he had said, with some hesitation, that possibly paragraph 2 of article 2 might to some extent serve to take account of the special situation which was of concern to the United Kingdom in so far as the internal law of the predecessor State—which under no circumstances could determine "predecessor" or "successor" status—still made it possible to define State property and State archives. But the subsequent debate had shown that misunderstandings could arise, which was why, in his considered opinion, in any of the situations contemplated, including that outlined by the representative of the United Kingdom, the only valid criterion in the context was that of "responsibility for the international relations of territory".

60. Mr. EDWARDS (United Kingdom) said that he would like to reply to points raised by a number of delegations.

61. The representative of the Soviet Union had said that a particular difficulty with the United Kingdom amendment was that its last sentence would give the predecessor State continuing functions which properly belonged to the successor State. He failed to see how such a conclusion could be drawn and it certainly did not represent the intent of the United Kingdom. The consequences of the last sentence of the United Kingdom amendment were the same as those which would flow from the definition contained in paragraph 1(*b*) of article 2.

62. The representative of Nigeria had expressed concern regarding the manner in which a determination would be made as to which government was to be treated as the predecessor State. In practice such determination would not be difficult; in most cases it would be clear which State was responsible for the functions regulated by the convention. In the event of a dispute, the matter could be arbitrated under the procedure for the settlement of disputes which would be included in the convention.

63. The representative of Kenya had raised the question of the precise legal relationship between the government of the territory to which the succession related —as referred to in the United Kingdom's amendment— and the government of the metropolitan State. The governments of former United Kingdom territories nearing independence had been internally autonomous, particularly in the matters regulated by the convention. Such governments, as legal entities, had held their own archives and property and contracted their own debts. They had of course been linked with the United Kingdom Government, as the government responsible for the international relations of the territories.

64. The representative of Kenya had indicated, in addition, that the amendment might be a source of complications in the case of federal States. The United Kingdom delegation had made it clear that it was ready to consider improvements to its text; the problem of federal States could be met through appropriate drafting changes with specific reference to articles 14, 26 and 36.

65. The suggestion of the representative of Austria that the United Kingdom's amendment be reworded to make it clear that the succession of States would concern only the territory and not the government was helpful.

66. The representative of Egypt had found the United Kingdom amendment unacceptable on the grounds that it was based on legal fictions. The amendment had been introduced precisely because the United Kingdom had to face certain difficult facts and in no way reflected any kind of fiction.

67. The representative of the Netherlands had expressed the view that the articles in the draft convention were designed to deal essentially with cases of the succession of States that followed a specific pattern and that they did not fit other situations. That was exactly

the problem faced by the United Kingdom. The Netherlands suggestion that a solution should be found elsewhere than in the definitions clause was a good one and should be explored.

68. In his first statement, the Expert Consultant had suggested that paragraph 2 of article 2 might suffice for dealing with the problem which the United Kingdom amendment was intended to resolve. That was precisely why the United Kingdom had decided to submit its amendment to that paragraph. His delegation regretted that the Expert Consultant had gone back on his earlier suggestion. A solution might perhaps be found within the text of paragraph 2, along the lines of the suggestion of the representative of Nigeria.

69. The United Kingdom delegation noted with regret that a majority of delegations did not seem able to accept its amendment, which concerned a technical matter relating to British practice in bringing to independence a large number of States which had become members of the United Nations.

70. Not wishing to prolong the debate, his delegation was therefore prepared to withdraw its amendment. He hoped, however, that, before the conclusion of the Conference, it might be possible to find a way of taking account of the United Kingdom's difficulties with the text as it stood, possibly by taking a further look at article 2, paragraph 2; in that connection, the proposal of the representative of Nigeria might be of assistance.

71. The CHAIRMAN said that the discussion on article 2 had been concluded and invited the Committee to vote on the article.

72. Mr. THIAM (Senegal) suggested that an effort might be made to adopt article 2 without a vote.

73. The CHAIRMAN said that, as there was no agreement among all delegations on the article, he was compelled to call for a vote. He therefore invited the Committee to vote on the text of article 2 as drafted by the International Law Commission.

Article 2 was adopted by 59 votes to none, with 9 abstentions, and referred to the Drafting Committee.

74. Mr. OESTERHELT (Federal Republic of Germany), speaking in explanation of vote, said that his delegation had none of the United Kingdom delegation's difficulties with the text of article 2 as it stood, and especially with paragraphs 1(*e*) and (*d*) of the article. However, it felt that in future cases—which were, after all, the only ones envisaged in the draft convention—the particularities of an important legal system should in some manner be accommodated and reflected in the convention. The drafting of an appropriate rule and the place where it should be included were matters of secondary importance. His delegation hoped that a solution might still be found, possibly elsewhere in the text of the draft convention.

75. Mr. MIKULKA (Czechoslovakia) asked what was the Committee's reaction to his suggestion that definitions of "State property", "States archives" and "State debts" should be incorporated in article 2.

76. The CHAIRMAN said that, if the suggestion of the representative of Czechoslovakia was implemented, then articles 8 and 19 would disappear.

77. Mrs. TYCHUS-LAWSON (Nigeria), speaking in explanation of vote, said that her delegation would have preferred to see paragraph 2 of article 2 deleted for reasons which she had explained earlier. She had not, however, pressed the issue in view of the opinion expressed by the Expert Consultant that it had not been the intention of the International Law Commission to imply that the definitions contained in the article could be superseded by State practice and usage. Her delegation took paragraph 2 to mean that the definitions contained in the article could not be superseded by the internal law of States.

78. Mrs. BOKOR-SZEGÖ (Hungary) said that her delegation had voted in favour of article 2 on the understanding that the Drafting Committee would examine the possibility of inserting in that article the definitions mentioned by the representative of Czechoslovakia.

79. Mr. MIKULKA (Czechoslovakia) asked whether the Committee was in agreement that the Drafting Committee should be asked to consider including the definitions he had mentioned within the framework of article 2.

80. The CHAIRMAN said that, in the absence of other suggestions, he took it that the Committee wished to refer to the Drafting Committee the question of including those additional definitions within the framework of article 2. In that case, the Committee would have concluded its consideration of article 2.

It was so decided.

The meeting rose at 5.20 p.m.

42nd meeting

Thursday, 31 March 1983, at 10.25 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

REPORT OF THE WORKING GROUP ESTABLISHED AT THE 40TH MEETING

1. Mr. KADIRI (Morocco), Chairman of the Working Group, introducing the Working Group's report (A/CONF.117/C.1/L.62), said that the new text proposed for article 32 represented a compromise solution reached after extensive discussion. The replacement of the words "A succession of States entails" by the words "The passing of State debts entails" and the words "in accordance with" by the words "subject to" applied *mutatis mutandis* to articles 9 and 20.

2. The proposal implied the deletion of article 8 *bis* and the withdrawal of the proposed amendments concerning articles 19 *bis* and 31 *bis*, as well as the amendments to article 32 proposed by the Netherlands (A/CONF.117/C.1/L.48) and Kenya (A/CONF.117/C.1/L.55) respectively.

3. He expressed appreciation of the spirit of co-operation shown by the members of the Working Group which augured well for the success of the Conference.

4. The CHAIRMAN congratulated the Working Group on its achievement in reaching a compromise on a very important matter and thus providing a solution, not only to the problem of the text of article 32, but to several other matters as well. The result of the Working Group's work showed that a spirit of mutual understanding was prevailing, which was a good omen for the success of the Conference.

5. Mr. SHASH (Egypt) expressed appreciation of the considerable effort the Working Group had put into reaching a compromise proposal on a complex subject. The text proposed, being a compromise, was not ideal for all delegations. Thus, his delegation had hoped that the Kenyan amendment would have been sufficient to solve the problems of article 32, without any need for changes in articles 9 and 20.

6. Speaking also on behalf of the countries members of the Group of 77, he said that, although acceptance of the solution proposed by the Working Group represented a substantial compromise, those countries were prepared to approve the proposal in a spirit of accommodation and goodwill.

7. Mr. USHAKOV (Union of Soviet Socialist Republics) thanked the Working Group for its efforts and said that his delegation could accept without difficulty all the proposals made in its report. His delegation presumed that the title of article 32 would remain unchanged.

8. The CHAIRMAN confirmed that the title of article 32 would remain as in the International Law Commission's text.

9. He then invited the Committee to adopt the report of the Working Group, action which would entail the adoption of article 32, as proposed by the Group, as well as approval of the consequential changes and withdrawal of the amendments noted in the report. Any disparities between the English version, which was the text on which agreement had been reached in the Working Group, and the other language versions, could be dealt with in the Drafting Committee.

The report of the Working Group was adopted and referred to the Drafting Committee.

Titles and texts of articles 15, 23* and 27* adopted by the Drafting Committee*

10. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, recalled that the Committee of the Whole had addressed certain specific requests to the Drafting Committee in connection with articles 15, 23 and 27; the Drafting Committee's response was contained in document A/CONF.117/C.1/1.

11. With regard to articles 15 and 27, both of which concerned the uniting of States, the Drafting Committee had been requested to submit a recommendation as to whether paragraph 2 of each of those articles should be retained or deleted. The Drafting Committee had decided that it was not desirable to retain the paragraph in either article; accordingly it was recommending the deletion of paragraph 2 in both cases.

12. Pursuant to another request from the Committee of the Whole, the Drafting Committee recommended that the word "a", before "successor State", in the first phrase of article 15 and article 27 should be replaced by the word "one". A further drafting adjustment had been made in article 27, which now referred, in the plural, to "predecessor States".

13. So far as article 23 was concerned, the Drafting Committee had been requested to submit a recommendation on the use of the term "State archives", taking into account the definition of that term in article 19. The Drafting Committee had decided to recommend the deletion of the word "State" before the word "archives" in order to avoid ambiguity and possible erroneous interpretations.

14. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee agreed to adopt the titles and texts of articles 15, 23 and 27 as proposed by the Drafting Committee in document A/CONF.117/C.1/1.

It was so decided.

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* Conclusion of consideration at the 16th, 24th and 29th meetings, respectively.

New articles 12 bis (Preservation and safety of State property) (*concluded*)* and *24* bis (Preservation and safety of State archives) (*concluded*)*

15. Mr. A. BIN DAAR (United Arab Emirates) said that, following consultations, his delegation had decided further to modify its proposal for a new article 24 *bis* and to revert to the text submitted at the 39th meeting in document A/CONF.117/C.1/L.50/Rev.1, with some slight amendments. The proposed new article 24 *bis* would read:

> "For the purpose of the implementation of the provisions of the articles of the present Part, the predecessor State shall take all measures to prevent damage or destruction to archives which, according to the present Convention, pass to the successor State."

16. The proposed article 12 *bis* relating to State property, as submitted by his delegation in document A/CONF.117/C.1/L.59, should be reworded in the same manner.

17. Mr. KOLOMA (Mozambique) recalled that when the representative of the United Arab Emirates had, at the 39th meeting, amended orally the proposal contained in document A/CONF.117/C.1/L.50/Rev.1, his own delegation had stressed that the text thus proposed did not impose a formal legal duty upon the predecessor State not to damage or destroy the State archives.

18. Unfortunately, another delegation had, in the course of the debate, misinterpreted his statement with regard to the text proposed and subsequently distributed as document A/CONF.117/C.1/L.50/Rev.2. He wished to make it clear that his delegation had never denied that the text proposed in that last document imposed an obligation. What it had said was that that text did not impose a formal legal duty.

19. His delegation therefore welcomed the text now proposed by the delegation of the United Arab Emirates which did in fact impose upon the predecessor State a formal legal duty not to damage or destroy the State archives which, according to the present draft convention, passed to the successor State.

20. Mr. HALTTUNEN (Finland) suggested the deletion from the text now proposed for article 24 *bis* of the concluding words "which, according to the present Convention, pass to the successor State". The effect of that deletion would be to broaden the effect of the provision in article 24 *bis* so as to cover the situation envisaged in paragraph 4 of article 25. That paragraph set forth the duty of the predecessor State to make available to the successor State, on the conditions stated therein, "appropriate reproductions of its State archives connected with the interests of the transferred territory". That situation would not be covered by the text now proposed by the sponsor of article 24 *bis*.

21. His delegation would not request a vote on its suggestion in the event of article 24 *bis* being adopted by consensus.

22. Mr. USHAKOV (Union of Soviet Socialist Republics) pointed out that in article 32, as adopted by the Committee, the formula "subject to the provisions of the articles in the present Part" had been used. He suggested that the same formula should be used in the proposed article 24 *bis*. The same formula should be adopted as in the case of articles 9 and 32.

23. The CHAIRMAN said that the point raised by the representative of the Soviet Union would be referred to the Drafting Committee when consideration of article 24 *bis* was over.

24. Mr. MAAS GEESTERANUS (Netherlands) said that he would not oppose the adoption by consensus of the revised text but he wished to reiterate his delegation's view that the provision did not ensure protection for archives which dit not pass to a successor State but from which that State might wish to obtain copies under paragraph 4 of article 25.

25. Nor did the provision make it the duty of the successor State to protect archives which passed to it, in the interest of their being copied for the benefit of the predecessor State.

26. Mr. PIRIS (France) expressed regret at the fact that the text in document A/CONF.117/C.1/L.50/Rev.2 should have been withdrawn by its sponsor in favour of a return to the earlier version—that in document A/CONF.117/C.1/L.50/Rev.1—which had caused his delegation and others considerable misgivings. His delegation would not oppose adoption of the proposed article 24 *bis*, but it reiterated those misgivings.

27. Mr. MOCHI ONORY di SALUZZO (Italy) asked the sponsor of the proposed article 24 *bis* whether the new obligation set forth in the article was considered to arise, in point of time, upon the actual passing of the archives or before. His own opinion was that the operative moment was that of the passing of the archives, but he wished to hear the opinion of the sponsor on that point.

28. Mr. A. BIN DAAR (United Arab Emirates) said it was his understanding that the obligation of the predecessor State resulted naturally from a process which took place before the actual date of succession. The obligation in question would exist, in the case of a newly independent State, as soon as it became known that the new State was going to emerge.

29. Mr. THIAM (Senegal) drew attention to the need to introduce in the French version of the proposed new article 24 *bis* the word "*ne*" before the words "*soient endommagées ou détruites*".

30. The CHAIRMAN said that the point just raised, which might affect other language versions, would be referred to the Drafting Committee.

31. Mr. MONNIER (Switzerland) said that, if the proposed new articles were put to the vote, his delegation would have to abstain. It had serious doubts regarding the approach adopted, which seemed to presuppose illicit behaviour, and even malicious intent, on the part of the predecessor State.

32. Furthermore his delegation, like that of the Netherlands, objected to the lack of balance in a provision which imposed an obligation upon the predecessor State without imposing any corresponding obligation on the successor State.

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* Resumed from the 40th meeting.

33. Mr. SUCHARIPA (Austria) said that his delegation supported the general idea underlying the proposal under discussion. However, it had reservations regarding the wording now proposed. In that connection, he expressed regret at the cessation of the efforts which had been made to arrive at a more generally acceptable text.

34. It was his delegation's understanding that the obligation set forth in article 24 *bis* arose at the date of the succession of States. He was now confirmed in his view, expressed during the discussion on article 21 (23rd meeting) that in many cases of State succession some time elapsed between the date of the passing of the archives and the date of their actual transfer.

35. Mr. BARRETO (Portugal) said that his delegation supported the proposed article 24 *bis* but wished to place on record its understanding that the article did not prejudice in any way the predecessor State's right, until the time of the actual transfer of the archives which passed, to sort or to photocopy, microfilm or copy in any other way any documentation in its possession before disposing of it, in accordance with its own archival rules. That understanding applied *mutatis mutandis* to article 12 *bis* as well.

36. Mr. PIRIS (France) said that, were the proposed new articles to be put to the vote, his delegation would have to abstain, because of the legal and technical difficulties they presented.

37. It was his delegation's understanding that the new obligation imposed upon the predecessor State arose after the succession of States and became effective as from the moment when the predecessor and the successor States reached agreement on the determination of the property and archives which passed to the successor State.

38. Mr. NATHAN (Israel) said that his delegation would not dissociate itself from the consensus on the proposed article 24 *bis*, despite its doubts concerning that provision.

39. It was his delegation's understanding that the obligation referred to in the article related to the time following the succession of States and not to the time preceding it.

40. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation would not oppose the adoption by consensus of the proposed new articles 12 *bis* and 24 *bis*.

41. While it had no objection to the substance of the rule contained in both those articles, his delegation nevertheless questioned the advisability of including in the draft convention such a singular rule, which made provision for an obligation upon the predecessor State without any corresponding obligation for the successor State.

42. Mr. EDWARDS (United Kingdom) said that his delegation, although prepared to join in a consensus, nevertheless had to state that it would abstain if a vote were to be taken, for the reasons it had given at the 33rd meeting when the new article 24 *bis* had been first proposed.

43. It was his delegation's understanding that the provisions of the two new articles proposed would not stand in the way of the normal archival practice of destroying papers after a given period.

44. Mrs. TYCHUS-LAWSON (Nigeria) reiterated her delegation's view that, for article 24 *bis* to have the meaning intended by its sponsor, it would be necessary to amend the concluding words "pass to the successor State" to read: "should pass to the successor State". Since, however, the revised text now proposed constituted a compromise, her delegation would not press that point to a vote.

45. It was significant that, even before the adoption of the future convention, differences had already emerged with regard to the interpretation to be given to various articles. Thus the sponsor of the proposal for the new articles 12 *bis* and 24 *bis* had indicated that the predecessor State's duty would arise before the succession of States actually took place. That view was not shared by a number of other delegations. The Nigerian delegation's understanding was that the duty of the predecessor State arose before the actual passing of State archives and continued after that passing; the same was true in respect of State property. The Drafting Committee might perhaps attempt to clarify that point.

46. Mr. RASUL (Pakistan) agreed with the previous speaker that it was necessary to insert the word "should" before the concluding words "pass to the successor State", in the proposed new article 24 *bis*, in order to give the meaning intended by the sponsor of the proposal.

47. It was his delegation's understanding that the verb "to pass" had to be given its legal significance. Accordingly, the text, as proposed, referred to the time following the occurrence of the succession of States. If, as explained by the sponsor, the intention was to cover certain situations before the succession of States, it would be necessary to use at the end of the article the formula "should pass to the successor State".

48. Mr. ROSENSTOCK (United States of America) expressed regret that the attempts to arrive at a more broadly acceptable formula had not been pursued.

49. As to the point raised by the delegation of Finland, it seemed to his delegation to be outside the scope of the present convention to enter into questions of general responsibility and due care.

50. As he saw it, the object of the proposed new articles was to create a good faith obligation incumbent upon the predecessor State when archives passed to a successor State. It would seem in fact to be a typical example of a good faith obligation under international law. According to his interpretation of the wording of the proposed new articles, the obligation existed as from the date of the succession of States and not before.

51. Mr. MURAKAMI (Japan) said that his delegation would not oppose the adoption of the new articles 24 *bis* and 12 *bis* by consensus, but would have to abstain if they were put to the vote.

52. Mr. HAWAS (Egypt) agreed with the representatives of Nigeria and Pakistan concerning the need to insert the word "should" before the words "pass to the successor State" at the end of the proposed articles.

53. The articles now proposed did not, in the view of his delegation, stand in the way of the routine destruc-

tion of unnecessary archives. The predecessor State could certainly, by virtue of its sovereign rights, carry out such routine operations in accordance with its archival practice.

54. Mr. MUCHUI (Kenya) reiterated the view, expressed by his delegation at the 33rd meeting, that the words "pass to the successor State", which did not clearly spell out the intended meaning, should be preceded by the word "should".

55. The usefulness of the proposed articles 12 *bis* and 24 *bis* would be greatly diminished if the interpretation placed upon them by the United States and a number of other delegations was accepted. According to those delegations, the predecessor State's duty to take care of the property and archives arose only after the succession of State had taken place.

56. That was particularly relevant with regard to property. For, while it was true that the physical transfer of archives might take some time or be delayed until well after the actual succession of States, the position was altogether different with regard to property. Title to property arose and the actual taking possession thereof necessarily had to occur on the date of the succession of States, namely, the date on which the flag of the predecessor State was lowered and the flag of the successor State was hoisted.

57. Mr. SKIBSTED (Denmark) said that his delegation agreed with the idea underlying the two articles and so was prepared to join in the consensus. However, it did not consider the inclusion of such provisions in the convention appropriate and would abstain in the event of a vote on them.

58. The CHAIRMAN said he took it that the Committee was prepared to adopt the proposed new articles 12 *bis* and 24 *bis* without a vote.

The texts of new articles 12 bis *and 24* bis, *as orally amended, were adopted and referred to the Drafting Committee.*

59. Mr. A. BIN DAAR (United Arab Emirates) thanked delegations for the goodwill they had shown in adopting by consensus the new articles 12 *bis* and 24 *bis* proposed by his delegation.

60. With a view to ensuring that the substance and purpose of those articles were well understood and observed by predecessor States without any misinterpretation, he drew attention to the explanatory statement he had made in reply to the Italian representative before the adoption of those articles, in which he had indicated that the obligations they laid on predecessor States commenced prior to the date of succession.

New article (A/CONF.117/C.1/L.60)

61. Mr. MARCHAHA (Syrian Arab Republic), introducing his delegation's proposed new article entitled "Rights of national liberation movements to request that safeguard measures be taken" (A/CONF.117/C.1/L.60), said that the text submitted showed the concessions which had been made, during consultations, in order to satisfy the great majority of delegations.

62. He wished to point out that the proposal did not

namely the succession of States. Its objective was not to have any particular social entity considered a subject of international law. A social entity could not become a subject of international law merely by virtue of an international treaty or convention, with the exception of treaties setting up international organizations whose purpose was precisely to establish new subjects of international law. However, a social entity acquired an international personality through transactions at the international level and indeed the existence of international relationships imposed on all parties thereto recognition of the international personality of the social entities involved.

63. All delegations had accepted the idea underlying the new articles 12 *bis* and 24 *bis*, which was similar to the concept underlying his delegation's proposal, since it related to measures to ensure the safety of property and archives passing to successor States.

64. The proposal could also be assimilated to those provisions, already incorporated in the draft convention, which related to third States and to private persons and were designed to protect the rights of such third parties. If the draft convention safeguarded those rights it should also safeguard the rights of national liberation movements, and particularly those movements which, in the view of the majority of delegations, were subjects of international law. It was obviously not within the competence of the Committee to determine the International legal status of national liberation movements and such was not the intention of his delegation's proposal, which was simply to ensure that the convention would not prejudice national liberation movements and the rights of the people they represented.

65. The text of the proposed new article imposed no obligation. It was concerned with national liberation movements which fulfilled the requirement of being recognized both by the United Nations and by any international regional organization. In accordance with the practice of the United Nations and the specialized agencies, those regional organizations were the Organization of African Unity, the Organization of American States and the Arab League. He accordingly requested that the text of document A/CONF.117/C.1/L.60 should be revised so as to mention those organizations explicitly.

66. His delegation had shown a spirit of co-operation and compromise throughout the Committee's deliberations. It had withdrawn its amendment to article 6 (A/CONF.117/C.1/L.36) and now submitted a proposal for a separate provision. As a further concession, it left it to the Committee to decide on the appropriate place in the draft convention for the new article it proposed, although it would prefer to see it inserted between articles 5 and 6.

67. Mr. HAWAS (Egypt) congratulated the delegation of the Syrian Arab Republic on its proposal, which was the outcome of consultations with many delegations and reflected an effort to accommodate all positions. The proposal was logical and constructive and conformed with the general trend of United Nations practice, international law and international practice

ticipation of national liberation movements in international activities and conferences, participation which was now a common occurrence. The proposal was also in harmony with the spirit of the draft convention and with the articles providing safeguards for normal subjects of international law. It was natural that safeguards should be provided also for national liberation movements.

68. There was general agreement on the principle of special treatment for newly independent States and he therefore appealed to all those who had accepted that principle to accept the proposal of the Syrian Arab Republic, since national liberation movements were the nuclei of newly independent States. Consonant with that reasoning and in view of the subject matter of the proposed article, the appropriate place for the latter was in Part I of the draft convention.

69. His delegation fully supported the Syrian proposal.

70. Mr. RASUL (Pakistan) said that his delegation supported the proposed new article which recognized existing United Nations practice. Certain national liberation movements which fulfilled the two conditions set forth in the provision had already been given observer status in the United Nations.

71. His delegation suggested that specific reference should not be made in the article to the Arab League, the Organization of African Unity and the Organization of American States, since the future convention would apply also to other geographical regions.

72. His delegation also suggested that the words "the right of self-determination and" should be deleted, as they were out of context. The right of self-determination was the basis of national liberation movements and thus did not require specific mention. Furthermore, the words did not fit into the subject matter of the present draft convention relating to the succession of States in respect of State property, State archives and State debts.

73. Mr. EDWARDS (United Kingdom) said that the new article proposed by the Syrian delegation caused his delegation some concern, as that text contained elements which it found entirely unacceptable. His Government had no doubt of the importance of the principle of self-determination for peoples, as it had made clear on appropriate occasions. His delegation felt, however, that the present draft convention was not an appropriate place for the reaffirmation of such a principle.

74. His delegation was unaware of any other widely accepted multilateral convention that affirmed the rights of national liberation movements and it regretted the introduction of the idea at the present Conference. The question of the rights of national liberation movements and the principle of permanent sovereignty had only very marginal relevance to the subject matter of the draft convention and those concepts did not have sufficient meaning in international law to be introduced into a codification convention. It was not clear what the effect of the proposed article would be; it was unlikely to result in anything other than a series of disputes.

75. His delegation had been instructed to place on record its view that neither the United Nations nor any other international organization could determine by resolution who were the authentic representatives of peoples concerned, since that contradicted the principle of self-determination. National liberation movements had no more and no less right to request that measures be taken than other bodies. The rights referred to did not need to be protected in the present convention. Their introduction appeared to his delegation to add irrelevant political elements into what was meant to be a convention codifying important questions of international law. His delegation noted with interest that the most recently negotiated relevant text, the Manila Declaration on the Peaceful Settlement of International Disputes,[1] which the United Kingdom Government supported and which was non-binding, contained no mention of the rights of national liberation movements.

76. There appeared to be a misapprehension underlying the arguments with which the Syrian representative had introduced his delegation's proposal. The "rights of national liberation movements", "the right of self-determination" and the "principle of permanent sovereignty" had not, so far as his delegation was aware, been affirmed in any document that constituted international law. General Assembly resolutions were not binding instruments.

77. Finally, the representative of the Syrian Arab Republic had indicated that extensive consultations had taken place on the text of the proposed new article and that certain accommodations had been made as a result. The Egyptian representative had supported that statement. He, himself, wished to place on record that his delegation had not at any point been consulted either in its capacity as delegation of the United Kingdom or in its capacity as Chairman of the Group of Western European and Other States.

78. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation was opposed to the new article proposed by the delegation of the Syrian Arab Republic. He failed to see what connection there existed between the proposal and the present draft convention. In the view of his delegation, there was no place for the proposed article in that instrument. Furthermore, the substantive content of the rule contained in the proposed article was not at all clear. To what measures did it refer and who was to take them? Lastly, his delegation opposed the proposal because it tended to introduce into the Committee's debates a highly divisive element.

79. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation fully supported the text of the proposed new article. However, it would prefer something more specific than the phrase "any international regional organization". In its view, the opinion of such a regional organization was valid only in so far as it reflected the will of the peoples of the region and not merely the opinion of the political leaders of countries members of the organization.

80. His delegation considered that the appropriate place for the proposed new article would be between the present articles 5 and 6.

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[1] See General Assembly resolution 37/10, annex.

81. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation found the idea underlying the Syrian proposal interesting and believed that, with some rewording, it might be incorporated in a resolution of the Conference rather than inserted as an article of the convention.

82. The text should perhaps be clarified in order to leave no doubt that it referred to the rights of a possible future government of an eventual successor State, in respect of matters covered by the proposed convention. Furthermore, while national liberation movements might be considered to have certain rights, there was no reason why such rights should be limited to movements recognized by the United Nations. Also, where rights existed, there had to be a corresponding obligation, and the person or body to whom that obligation was addressed should be made clear.

83. The Syrian Arab Republic had suggested that the obligation should be addressed to the United Nations, and consequently its text defended the rights of national liberation movements to request that the United Nations take certain measures. However, neither the present Conference nor the present draft convention was the place to remind persons or bodies outside the United Nations of that obligation. His delegation would welcome further clarification of that point by the representative of the Secretary-General of the United Nations or by the representative of the Syrian Arab Republic.

84. Mr. AMANULLAH (Indonesia) said that his delegation could accept the proposed new article but would like to see the words "any international regional organization" replaced by "the appropriate regional organization".

85. Mr. ROSENSTOCK (United States of America) said that the title of the Conference itself provided adequate proof that the Syrian proposal was irrelevant to the Conference's work and, while some delegations could doubtless support the substance of the proposal in a relevant context, other delegations, his own among them, had substantive problems with the text.

86. The United States delegation could not agree that General Assembly resolutions provided a legal basis for such a proposal or that such a proposal had any value as *lex ferenda*; nor did it believe that the convention affected any fundamental human rights, including the rights of all peoples to equal rights and self-determination.

87. The Syrian proposal was politically divisive and, while its introduction in a relevant context might be tolerated, it was an extremely disturbing matter for it to be introduced where it was so clearly irrelevant. Any decision to adopt the Syrian proposal in any form would be a decision to abandon *in toto* all pretence that the Conference was engaged in serious codification or progressive development.

88. Mr. NATHAN (Israel) pointed out that the Syrian amendment was almost identical in its terms and object to that submitted by the same delegation in document A/CONF.117/C.1/L.36 which had been withdrawn the previous day.

89. The proceedings of the present Conference had on the whole been characterized by a general desire to refrain from introducing amendments of a manifestly political nature. The amendment now before the Committee was the first one which had an overt and avowed political purpose, but it was without any concrete legal content or meaning.

90. His Government's views on the question of the right of self-determination and the status of national liberation movements had been clearly stated in the appropriate fora and did not require repetition at the present Conference. He would only emphasize that the status of those movements and the rights in question had not so far been given legal recognition and that General Assembly resolutions were recommendations which had no binding legal effect.

91. That the Syrian amendment was irrelevant and outside the scope and context of the present draft Convention was clear from article 1 and article 2—particularly its paragraph 1(*a*)—and paragraph (2) of the International Law Commission's commentary on article 1 which stated that, in incorporating the words "of States" in article 1, the Commission had intended to exclude from the field of application of the present draft articles the succession of Governments and the succession of subjects of international law other than States, an exclusion which also resulted from article 2, paragraph 1(*a*).

92. Paragraph (4) of the commentary on article 1 also indicated that the field of application of the draft articles was limited to the effects of succession of States in respect of State property, archives and debts. The Commission had emphasized the words "effects" in order to indicate that the provisions of the draft convention concerned not the replacement of one State by another but its legal effects, namely, the rights and obligations deriving from the replacement. Those effects were set out in articles 9, 20 and 32.

93. Two basic conclusions could therefore be drawn. First, like that of the 1978 Vienna Convention, the scope of the present draft convention was limited to the succession of States, and of States only. Second, the scope of the convention was limited to the legal consequences of such succession. In its scope, the draft convention did not have the remotest connection with liberation movements or with any developments or measures which might ultimately result in a succession of States, because such developments or measures were not connected with the effects of the succession of States but preceded the succession. The measures referred to in the Syrian amendment did not have the slightest connection with the effects of a succession of States as set out in the convention, any more than liberation movements were involved in a succession of States, for the simple reason that they were not States.

94. The representative of the Syrian Arab Republic had referred to the safeguard provision in article 6 relating to the rights of natural or juridical persons and had asked why the rights of liberation movements should not be similarly protected. In that connection, the International Law Commission's commentary on article 6 indicated that the intention of the safeguard clause was to avoid any implication that the effects of a succession of States in respect of State property, archives and debts, could in any respect prejudice any

question relating to the rights and obligations of individuals, whether natural or juridical persons. There was therefore a direct link between the objects of article 6 and the effects of State succession, whereas no such link existed in the case of the new article proposed by the Syrian Arab Republic.

95. Mr. PIRIS (France) said that the Syrian proposal presented problems of both a legal and a technical nature for his delegation. In the first place, there was no doubt whatsoever that, in the light of articles 1 and 2, the Syrian proposal fell outside the scope of the draft convention. Furthermore, while his delegation recognized the right of peoples to self-determination, it could not see what recognition of that right contributed to the convention.

96. The French delegation also supported the principle of permanent sovereignty of every people over its wealth and natural resources, provided that such sovereignty was exercised in accordance with international law. In that connection, he referred to the relevant provisions of the International Covenants on Human Rights adopted in 1966.[2]

97. A number of the expressions used in the proposed new article were vague and ambiguous. Examples were the word "request", and the "measures" that were to be taken, which had not been specified in any way. The text also provided that none of the provisions in the present convention should be considered as affecting the rights of certain people, but his delegation failed to see how they could do so.

98. For all those reasons, therefore, the French delegation could not accept the Syrian proposal.

99. In conclusion, he pointed out that, while reference had been made to extensive consultations on the proposed new article, the French delegation had not been invited to any such consultations and had heard nothing about them.

100. Mr. LAMAMRA (Algeria) said that his delegation had no doubt as to the scope and appropriateness of the ideas contained in the Syrian proposal. The intent of the provision was quite clear, namely, that national liberation movements, as representatives of their peoples and in their struggle to assert their rights to self-determination, had the right to request international organizations and States receptive to their aspirations to assist them in safeguarding the rights of their peoples, in accordance with the principles embodied in the Charter of the United Nations. The right of national liberation movements as described in the Syrian proposal were incontestable, as was the fact that such movements exercised such rights. The Syrian delegation sought only to affirm those rights, as was quite normal, in the context of a convention on the succession of States.

101. The requirement of recognition of the national liberation movements concerned by the United Nations and by any international regional organizations could not be interpreted as a precondition for the existence of such a movement or of its right to represent its peoples.

102. It had been suggested that the Syrian proposal was outside the scope of the convention, but, since the latter dealt with the effects of succession of States, it was precisely by including in it an article such as that proposed that such succession would have no negative effects with regard to the right to self-determination.

103. One delegation had stated that the Manila Declaration made no reference to national liberation movements. As he recalled, they had been referred to more than once, although not expressly by name.

The meeting rose at 1 p.m.

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[2] See General Assembly resolution 2200 A (XXI).

43rd meeting

Thursday, 31 March 1983, at 3.25 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 *(continued)* (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

New article (A/CONF.117/C.1/L.60) *(continued)*

1. Mr. PHAM GIANG (Viet Nam) said that his delegation, with its long experience of wars of national liberation and of devastation left behind by predecessor States, considered the Syrian Arab Republic's proposal for a new article on the right of national liberation movements to request that safeguard measures be taken (A/CONF.117/C.1/L.60) to be legitimate and well-founded. National liberation movements were subjects of international law recognized by numerous States, by many regional and world-wide intergovernmental organizations including the non-aligned movement, and by the United Nations itself. If it meant to carry out its mandate in an equitable manner, the Conference could not remain indifferent to the rights of national liberation movements and had to find a judicious solution to the problem raised in the Syrian proposal, which enjoyed the support of many members of the Group of 77, including his own delegation.

2. However, if the proposal for including such an article in the draft convention should present insuperable difficulties to certain delegations, his delegation thought that consideration might be given to the compromise solution suggested by the Netherlands at the previous meeting, namely, that the Syrian delegation's text should be adopted in the form of a resolution of the

Conference. A similar decision had been reached after long negotiations at the Conference on the Law of the Sea held recently in New York.

3. So far as the proposed text was concerned, he suggested that interested delegations might confer directly with the Syrian delegation with a view to arriving at a generally acceptable draft.

4. Mr. MUCHUI (Kenya) noted that the principal objection to the Syrian delegation's proposal raised at the preceding meeting had been that its subject matter lay outside the scope of the envisaged convention, which dealt with the devolution of State property, archives and debts from the predecessor to the successor State. Yet the convention, in its articles 12 and 23, went beyond the strict confines of that topic by referring to third States. National liberation movements were surely nothing other than States in the making; as such, they deserved a higher level of protection than that accorded under article 6 of the draft convention.

5. He could not accept the position of those delegations which, while insisting on extending protection to the rights of private creditors, refused to grant it to the rights of the thousands of people represented by national liberation movements, and even made their support of the convention as a whole contingent upon the rejection of the Syrian proposal.

6. His delegation felt strongly that the national liberation movements and the people they represented should be given a place in the draft convention and therefore gave its unqualified support to the Syrian proposal, subject to drafting improvements such as those proposed by Indonesia and Pakistan in the course of the debate.

7. Mr. TARCICI (Yemen) said that the draft convention contained a number of articles providing special safeguards for the rights of newly independent States. The adoption of those articles without significant opposition reflected most favourably upon the Committee's equitable and honourable spirit. By the same logic, it should also be prepared to provide safeguards for peoples which had not yet achieved independence and to the national liberation movements which were recognized as their lawful representatives, first, by those peoples themselves and, second, by the regional organizations best qualified to judge their representative character and then also by the United Nations and its specialized agencies. The peoples concerned were going through the period of struggle which was the inevitable prelude to their emergence as newly independent States. They were entitled to safeguards of their right to State property and State archives, and the Conference had a legal and moral duty to protect those rights. Failure to include a provision to that effect would leave a serious lacuna in the draft convention; the delegation of the Syrian Arab Republic was to be congratulated upon its effort to fill the gap with its proposal.

8. He wholeheartedly supported the proposal and suggested that, once it had been adopted, drafting changes might be introduced, as required, by agreement with its sponsor.

9. Mr. BRAVO (Angola) said that the importance of the proposal under discussion lay in the fact that national liberation movements had been the starting point of the formation of many newly independent States. The Syrian delegation's proposal was well-founded from the point of view of international law because it took into account the right of peoples to self-determination enshrined in a multitude of international instruments. The principle of permanent sovereignty of States over their wealth and natural resources formed part of the concept of the right to self-determination since, without decolonization, in other words without self-determination, peoples could not exercise effective control over their wealth and natural resources. The status of national liberation movements which, as other speakers had pointed out, were nothing less than States in the making, as subjects of international law was no longer open to serious challenge, as was shown by the fact that observers for national liberation movements were participating in the Conference.

10. His delegation had no doubts as to the appropriateness of the Syrian proposal and fully supported it on grounds of principle.

11. Mr. MARCHAHA (Syrian Arab Republic), replying to points made during the discussion, said that in submitting its proposal his delegation had not been motivated by political interests, as some delegations had implied, but had merely wished to draw attention to an important legal matter which deserved a place in the draft convention. The articles already adopted were based on equitable principles; some of them provided protection for third States and even for private individuals within the scope of the convention. The principle of permanent sovereignty of all peoples over their natural resources was not in doubt. The sole purpose of the proposal was to enrich the draft convention without causing detriment to anyone.

12. The criticisms addressed to the proposal fell into two categories: those of a purely negative kind, which aimed at the proposal's unconditional rejection, and constructive suggestions designed to improve its text. His delegation resolutely refuted the former group of objections and declared its willingness to take full account of the latter.

13. The CHAIRMAN suggested that, in view of the readiness expressed by the representative of the Syrian Arab Republic to consider constructive suggestions aimed at improving the proposed text, a decision on the proposal should be deferred until a later stage.

14. Mr. MEYER LONG (Uruguay) said that, in view of the importance of the subject under discussion, it would be helpful to hear the views of the Expert Consultant.

15. Mr. NDIAYE (Senegal) said that his delegation would be happy to support the Syrian delegation's proposal. It was only just that national liberation movements should have the right to request that measures be taken to safeguard the rights of the peoples they represented. It would be hard to understand that a convention which protected the rights of private persons should fail to afford any protection to those of peoples struggling for their liberation. Since it was intended to confer a right and not to impose a legal obligation, the proposal avoided the delicate question of the capacity of liberation movements to assume obligations under an international convention.

16. He added that the sponsor of the proposal had taken the precaution of introducing the criterion of twofold recognition, first by the United Nations and secondly by a regional organization, thus guaranteeing that the liberation movements whose rights were to be recognized would be those which were truly representative and seriously committed to their task.

17. He suggested that the words "any international regional organization" in the Syrian text should be replaced by the phrase "the international organization most representative of the region concerned". That formula would tend to forestall disputes regarding recognition at the regional level.

18. Mr. IRA PLANA (Philippines) said that his delegation had always adhered to the formula used by the United Nations in relation to national liberation movements, namely, "national liberation movements recognized by the United Nations and/or the Organization of African Unity and the League of Arab States". As it gathered that the Syrian delegation was open to suggestions concerning its proposal, the delegation of the Philippines suggested that that formula should be incorporated in the text of the Syrian proposal.

19. Mr. A. BIN DAAR (United Arab Emirates) said that protection for the rights of peoples struggling for their independence was endorsed by most countries as a matter of principle.

20. The Syrian proposal was thus an important one. It did not directly affect the status of liberation movements as such but was principally concerned with the peoples whose rights and interests the draft convention sought to preserve. Even those who did not support national liberation movements recognized the need to safeguard the human and legal rights and interests of the peoples represented by such movements.

21. Since the Syrian delegation had stated that it was open to suggestions for improvements of the text, his delegation felt that the Committee should give the Syrian delegation time to consult with others which might like to make constructive suggestions.

22. Mr. BEDJAOUI (Expert Consultant) responding to the request of the delegation of Uruguay, said that his personal opinion on the subject of national liberation movements would be of no great value to the Committee in its deliberations.

23. The role of national liberation movements in history had often been to prompt future predecessor States and third contracting States to guard against an unjust and undue disposal of the property, rights and interests rightfully belonging to the people of a territory. The Syrian proposal, in giving pre-eminence to the principle of permanent sovereignty of every people, including a people under foreign or colonial domination, over its wealth and natural resources, might well be appropriate in the context of the draft convention. That was a matter entirely for the Committee to decide however and he was not in a position to offer guidance.

New articles and annex (Settlement of disputes)

24. The CHAIRMAN invited the Committee to consider proposals submitted jointly by Denmark and the Netherlands for a new article on settlement of disputes (A/CONF.117/C.1/L.25/Rev.1/Corr.1) and for an annex on arbitration (A/CONF.117/C.1/L.57), as well as proposed new articles on settlement of disputes (A/CONF.117/C.1/L.58), submitted by Mozambique and Kenya.

25. Mr. MAAS GEESTERANUS (Netherlands), introducing the proposed new article contained in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 on behalf of the sponsors, said that it rested on their conviction that rules of law primarily served the interests of the smaller and weaker in society. In the face of the tendency on the part of the powerful, in the event of a dispute, to rely on imposing their will by force rather than on the process of law, it was first and foremost in the interests of the weaker to have a means of recourse to an impartial third party. By refusing to accept an optional procedure, however, the State, already in a position of strength, would once again be able to impose its will on the weaker party. For those reasons the proposal was designed, in the general interests of the peaceful development of international relations and the particular interests of less powerful States, to establish a compulsory judicial procedure for the settlement of disputes.

26. Paragraph 1 of the proposed text had been included in the light of useful informal consultations with other delegations. It recognized the well-known fact that negotiations were as a general rule undertaken with greater seriousness when both parties were aware that, failing a mutually agreed solution, either might unilaterally invoke a judicial or arbitral procedure. Thus, paradoxically, a compulsory settlement procedure was incorporated in an instrument not for the purpose of being used but to inspire fruitful negotiations which would make recourse to it unnecessary.

27. Paragraph 2 referred to the International Court of Justice. The Court was the principal judicial organ of the United Nations. It also offered the least costly settlement procedure, since the parties to a dispute were not obliged to pay the judges, while in cases of arbitration or conciliation they were always required to pay the arbitrators' or conciliators' fees.

28. At the same time the final words of paragraph 2 left the parties at liberty to agree on other means of settlement and, under paragraph 3, any State which so desired was free to indicate a preference for the arbitration procedure provided for in paragraph 4, the details of which were set out in the proposed annex (A/CONF.117/C.1/L.57) to be added to the convention. That annex established nothing new; similar rules were to be found in other conventions, and the provisions proposed by the sponsors were modelled on those of the 1969 International Convention relating to intervention on the high seas in cases of oil pollution casualties,[1] an example which had proved acceptable to States of all regions of the world.

29. He proceeded to explain why the procedure adopted in the case of the 1978 Vienna Convention on Succession of States in Respect of Treaties[2] had not been considered by the Danish and Netherlands delega-

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[1] United Nations, *Treaty Series*, vol. 970, p. 211.

[2] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

tions to be adequate for the purposes of the present convention. Although, as a conciliation procedure, it might resolve a particular conflict between States, it would not provide for a binding award nor generate jurisprudence on a number of important but vague notions embodied in the present convention.

30. The sponsors of the proposal were convinced that it was essential to recognize the obligation to submit to international jurisdiction disputes on certain points of law which could not be resolved in any other manner. They had the following five points particularly in mind: first, whether or not a succession of States had taken place in conformity with international law and thus whether or not it fell within the scope of the present convention in accordance with article 3 thereof; second, whether or not an agreement between a successor State and a predecessor State infringed the principle of permanent sovereignty of every people over its natural resources and, if so, what were the consequences; third, what exactly, in a given case, was to be understood as representing "equitable proportion" and "equitable compensation" in the context of the present convention; fourth, whether or not an agreement between a successor State and a predecessor State endangered the fundamental economic equilibria of the successor State and, if so, what the consequences must be; and, last, whether or not such an agreement infringed a people's right to development, to information about its history and to its cultural heritage, and, if so, what were the consequences.

31. Mr. KOLOMA (Mozambique), introducing the text of new articles concerning the settlement of disputes proposed by Mozambique and Kenya (A/CONF.117/C.1/L.58), said that, in proposing their text, the sponsors had been guided by the principle of free choice of means in the settlement of international disputes. That principle was implicit in paragraph 1 of Article 33 of the Charter of the United Nations and explicitly stated in paragraph 3 of the 1982 Manila Declaration on the Peaceful Settlement of International Disputes.[3] That principle also underlay the procedure established for the settlement of possible disputes arising from the interpretation or application of the 1978 Vienna Convention.

32. It was for that reason that the sponsors had decided to propose exactly the same articles, together with their annex, as those adopted in the 1978 Vienna Convention. Those articles had emerged from lengthy discussion in the *Ad Hoc* Group and in the Committee of the Whole of the Conference on Succession of States in Respect of Treaties, and had been adopted without a vote. That indicated that the provisions could be regarded as reliable and he hoped that the proposal co-sponsored by Kenya and Mozambique would be acceptable to the majority of delegations and that it might, once again, be adopted without a vote.

33. His delegation would not be able to accept the proposal submitted by Denmark and the Netherlands for the simple reason that it did not respect the principle of free choice of means for settlement of possible disputes; paragraph 2 of the proposed new article invoked the compulsory jurisdiction of the International Court of Justice, a judicial body recognized by only about 45 countries of the more than 150 which constituted the international community. He emphasized that the proposal of Mozambique and Kenya itself did not exclude the possibility of recourse to the International Court of Justice as an alternative means of settling a dispute arising from the present draft convention. That means, however, like all the others referred to, remained only an option.

34. Mrs. THAKORE (India) said that the future convention, if it was to be a complete and self-contained legal instrument, should unquestionably provide for machinery for the settlement of disputes. In order to ensure the widest possible application of the convention, such machinery should be flexible and take into account realities and the principle that States should have a free choice as to the means to be used for settling disputes.

35. The proposal by Denmark and the Netherlands was an improvement on the original text in that in its new paragraph 1, it recognized the need to provide for consultation and negotiation as the very first step in the process of settlement. Direct consultations between the parties were of fundamental importance; no one could deny that negotiation was the basic means of settling disputes, as could be seen from the pre-eminent position accorded to it in Article 33 of the Charter of the United Nations. Her delegation could thus fully support paragraph 1 of the proposal.

36. However, although in paragraph 3 the proposal gave every State the option of declaring, at the time of signature or ratification of the convention, that it did not consider itself bound by paragraph 2, which provided for compulsory adjudication by the International Court of Justice, or to agree upon other means of settlement, paragraph 4 reintroduced the element of compulsion by requiring the dispute, if it remained unsolved, to be submitted to compulsory arbitration. While her delegation fully recognized the importance of adjudication and arbitration as means of settlement, the fact remained that the international community was not yet ready for the imposition of compulsory and binding legal procedures. Such procedures could, of course, be employed with the consent of both parties, a decision being taken in each individual case on its merits.

37. For that reason, the proposal of Denmark and the Netherlands, although it had the merit of brevity and precision, was too radical and inflexible to gain general acceptance. The principle of free choice of means would be fully safeguarded only by the proposal submitted by Mozambique and Kenya, which had the added advantage of flexibility. At the 1978 Conference on Succession of States in Respect of Treaties, strong opposition had been voiced by an overwhelming majority of States to proposals providing for compulsory recourse to the International Court of Justice and to arbitration. Articles 41 to 44 of the 1978 Vienna Convention reflected the text ultimately adopted, without a vote, after study by a working group. It was that text which had been reproduced in the proposal submitted by Mozambique and Kenya. That proposal was therefore the more likely of the two before the Committee to win general approval, and her delegation recommended its adoption by the Committee as submitted.

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[3] General Assembly resolution 37/10, annex.

38. Mr. PASTOR RIDRUEJO (Spain) said that, in the interests of both legal security and justice, it was essential that a convention codifying and developing international law should contain a provision relating to settlement of disputes. Owing to the special characteristics of the convention to be prepared by the Conference, his delegation considered that the convention should make provision for compulsory settlement through judicial or arbitral procedure.

39. The articles so far adopted contained many ambiguous phrases, such as "relevant circumstances", "equitable proportion" and "fundamental economic equilibria", which would give rise to difficulties of interpretation. It was therefore essential to make provision for an impartial body which would give binding rulings consistent with international law in cases of disputes concerning succession to State property, archives and debts that might arise between parties to the future convention.

40. In the light of those considerations his delegation supported the new article proposed by Denmark and the Netherlands and their proposal for an annex to the convention as they were based on the concept of compulsory settlement of disputes as the final residuary mode of settlement. However, he suggested that the first sentence of paragraph 3 of the proposed new article should provide that a State might declare that it did not consider itself bound by paragraph 2, not only at the time of signature or ratification of the convention or accession thereto, but also, as a further alternative, at any subsequent stage.

41. His delegation, while appreciating the initiative of Mozambique and Kenya, would not be able to support their proposed new article, which was largely based on premises unacceptable to his delegation.

42. In conclusion, he said that his delegation's position was flexible and that it would remain open to other suggestions regarding suitable procedures for settlement of disputes.

43. Mr. HAFNER (Austria) said that the question of settlement of disputes was a very sensitive one and the way in which the Conference dealt with that question might well determine the standing of the future convention not only as part of international law but also as an instrument governing inter-State relations in the matter of succession to State property, archives and debts. He referred to paragraph 9 of the Manila Declaration annexed to General Assembly resolution 37/10 which called on States to include in bilateral and multilateral instruments effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.

44. What was needed in the convention being prepared by the Conference was an effective provision which would enable the States to ascertain, invoke and defend the rights resulting from that convention. The new article proposed by Denmark and the Netherlands met those requirements fully and would, if adopted, constitute an ideal solution to a difficult problem. It also reflected the revival of interest in arbitration as a means for settling disputes.

45. The proposed new article was all the more necessary in that the convention referred in several articles to the concept of equity. That concept, in the context of the convention, implied an instrument which would determine the distribution of goods and wealth in accordance with the interests of all the parties involved in a succession of States.

46. In conclusion, he said that his delegation appreciated the effort made by the delegations of Mozambique and Kenya in proposing provisions concerning the settlement of disputes but felt that their proposal was too closely modelled on the 1978 Vienna Convention. Considering that a solution representing progress from the 1978 Convention was called for in the present context, his delegation accordingly preferred the article submitted by Denmark and the Netherlands.

47. Mr. ROSENSTOCK (United States of America) said that the question of settlement of disputes seemed to generate more hypocrisy and cant than any other issue before the Conference. In particular, he considered that it was not a tenable position for a delegation to maintain that the international community in general was not ready to accept the jurisdiction of the International Court of Justice: all countries which were Members of the United Nations were parties to the Statute of the International Court. Similarly, it was disingenuous for delegations to pretend to favour free choice of means of settlement of disputes when what they were really aiming at was the avoidance of binding third party settlement.

48. There was nothing radical about accepting the principle of binding third party settlement. The effect of upholding that principle would be to strengthen the international order and to promote the sovereign equality of States. Both the proposed new articles were based on precedents, but that of Denmark and the Netherlands represented a much more significant step on the path to an international judicial order. While rejection of that proposal would not be a catastrophe for countries like his own which were economically and militarily strong, there was no doubt that it would constitute a disappointing failure on the part of the Conference. On the other hand, he considered that it would be most regrettable if the text proposed by Mozambique and Kenya was adopted.,

49. Mr. SKIBSTED (Denmark) said that his country, which upheld the rule of law in international relations, had always strongly favoured the inclusion of effective provisions for the settlement of disputes in bilateral and multilateral agreements and conventions. To be effective, both the system of recourse to settlement procedures and the resulting decision of the court or arbitral tribunal must be binding upon the parties to a dispute.

50. In his delegation's view the proposed new article, which it had sponsored, established the kind of effective system needed in the convention.

51. The existing text of the convention made reference to a number of vague concepts whose legal meaning was not universally accepted or uniformly interpreted. The principle of equity, for example, played an important role as a criterion in a number of provisions, but the draft to some extent failed to provide guidance to the parties to the convention in the event of conflicts of interest which might arise in connection with a suc-

cession of States. In his delegation's opinion, the settlement of disputes procedures provided under the 1978 Vienna Convention, the relevant provisions of which were reproduced in the text proposed by Mozambique and Kenya would not constitute a sufficiently effective system in that regard.

52. Mr. GÜNEY (Turkey) said that the question of settlement of disputes was always a controversial issue at conferences concerned with the codification and progressive development of international law. In any endeavour to establish effective procedures for the settlement of disputes concerning the interpretation or application of a convention it was essential to bear in mind the reluctance and misgivings felt by the international community with regard to compulsory jurisdiction. In particular, the fact must be taken into account that only one third of the States which were parties to the Statute of the International Court of Justice recognized the Court's jurisdiction. Furthermore, with the exception of the 1969 Vienna Convention on the Law of Treaties, in respect of two clauses considered to be *jus cogens*, none of the conventions adopted at diplomatic conferences in recent decades had made provision for compulsory jurisdiction.

53. The Conference should be realistic: it had no choice but to establish and adopt procedures for the settlement of disputes which would allow a State party to the convention freedom to choose the appropriate means for resolving a dispute in each particular case. From that standpoint his delegation had difficulty with the new article proposed by Denmark and the Netherlands. On the other hand, it found the text submitted by Mozambique and Kenya acceptable in that it was based on the principle of free choice and emphasized that direct negotiations were the most effective means for resolving disputes.

54. Mr. CONSTANTIN (Romania) said that his delegation fully supported the new text proposed by Mozambique and Kenya which corresponded to the relevant clauses of the 1978 Vienna Convention and offered undeniable advantages. The proposed text took into account differing views of States with regard to the modes of settlement of disputes. The proposal provided for a number of procedures which were both feasible and desirable in that it provided for negotiation, conciliation, judicial settlement and arbitration. Recourse to the one or other of those procedures presupposed that all the parties to a dispute accepted the procedure concerned. In keeping with its approach to the issue under discussion, his delegation was unable to accept the new article submitted by Denmark and the Netherlands.

55. Romania had consistently defended respect for and the integral application of the principles of international law, in particular the principles of independence, sovereignty, non-interference in internal affairs, non-use of force or the threat of force, and equality of rights. Those principles were fully upheld in the text proposed by Mozambique and Kenya, which would, he hoped, be generally acceptable as a compromise.

56. The proposal of Denmark and the Netherlands diverged considerably from the solution adopted in the 1978 Vienna Convention in that it established a compulsory procedure which was unacceptable to many countries, including his own.

57. Mr. POEGGEL (German Democratic Republic) said that in principle his delegation supported the idea that there should be an obligation upon States to settle, by peaceful means, any dispute regarding the application or interpretation of the convention under consideration. It shared the view of other delegations that, in the light of fundamental principles of international law such as the sovereign equality of States and the obligations of States to co-operate with each other in peace and to settle disputes by peaceful means, it would be helpful to include in the convention an obligation to enter into consultations and a mandatory conciliation procedure. Similar questions had arisen in the case of past conventions such as the 1978 Vienna Convention. The so-called Manila Declaration of 1982 underlined the idea of a free choice of States to settle their disputes by peaceful means in conformity with the Charter of the United Nations.

58. His delegation fully supported the procedure for the peaceful settlement of disputes proposed by Mozambique and Kenya which reproduced textually the corresponding clauses of the 1978 Vienna Convention. During the 1978 Conference, although some delegations had not been fully satisfied, all had supported the articles on settlement of disputes. From a legal standpoint, misunderstandings could arise if there were differences between the procedures for the settlement of disputes provided for in the two Conventions on Succession of States.

59. His delegation had difficulties in principle with the proposal of Denmark and the Netherlands which provided for the compulsory jurisdiction of the International Court of Justice and for an optional procedure. His delegation was in principle opposed to such an approach but not because it did not like an obligatory procedure for the peaceful settlement of disputes; on the contrary, such a procedure was the only justifiable way in which to solve legal and political problems between States. It was not, however, possible to overlook the fact that less than 30 per cent of the membership of the United Nations recognized the compulsory jurisdiction of the International Court of Justice. In the view of his delegation it was an illusion to expect that, in a world of nearly 160 States, with widely differing social, political and legal characteristics, the compulsory jurisdiction of the International Court of Justice could prove generally acceptable.

60. Mr. YÉPEZ (Venezuela) said that his delegation strongly supported the concept of the peaceful settlement of disputes which was reflected in his country's Constitution so far as the operation and interpretation of treaties were concerned. Accordingly, his delegation considered that the convention should make provision for machinery for the settlement of disputes. The jurisdiction of the International Court of justice and arbitration offered means for the peaceful settlement of disputes; his delegation did not, however, agree with the concept that parties to a dispute should be obliged to have recourse to either judicial or arbitral settlement. In its opinion, those procedures should only be employed in cases where there was a previous agreement between

the parties to a dispute to resort to judicial or arbitral settlement, and not by virtue of a mandatory provision in an international agreement. His delegation could not, therefore, support the proposal of the Netherlands and Denmark because it provided for an obligatory procedure with the binding consequences set out in paragraph 4.

61. His delegation was not happy with the proposal of Mozambique and Kenya but felt that, as a compromise, it would satisfy his delegation. Article B of the proposed text, on the conciliation procedure, contained an obligatory element; what the conciliators would be required to do would be to make recommendations which would not, however, be binding on the parties. Choice was therefore permitted in the proposal of Mozambique and Kenya; because of the need for a text which would satisfy the aspirations of the international community as a whole, his delegation felt that the proposal of Mozambique and Kenya was best suited to meet the needs of the countries represented at the Conference. His delegation would therefore vote in favour of that proposal.

62. Mr. HAWAS (Egypt) said that, like others, his delegation had difficulty in accepting the proposal of Denmark and the Netherlands which would bind governments in advance to follow a certain procedure for the settlement of disputes. On the other hand, the proposal of Mozambique and Kenya had the merit of following several precedents and represented a compromise although some delegations were clearly not happy with the proposed article C which provided for the obligatory submission of disputes to the International Court of Justice or to arbitration in cases where both parties had accepted the provisions of that article for the future.

63. The formula proposed by Mozambique and Kenya had been accepted by all parties to the 1978 Vienna Convention, when it had been adopted without a vote. That formula contained a minimum which would be acceptable to all. More time would be required to go beyond such a compromise and such time was not available. Moreover the formula did not close the door to the future acceptance of article C by the parties. His delegation therefore supported the proposal of Mozambique and Kenya.

64. Ms. LUHULIMA (Indonesia) said that her delegation favoured the concept of conciliation and negotiation for the settlement of disputes. As a matter of principle, it could not accept the compulsory jurisdiction of the International Court of Justice. Her delegation therefore would not vote for the proposal of the Netherlands and Denmark. It was, however, sympathetic to the proposal of Mozambique and Kenya because it would make the submission of a dispute to the International Court of Justice conditional on the agreement of the parties concerned.

65. Mr. MONCEF BENOUNICHE (Algeria) said that his delegation considered that a procedure for the settlement of disputes should be provided for in the convention but found it difficult to imagine that the element of compulsion could be accepted by States. He agreed with the representative of Egypt regarding the need for a compromise formula. His delegation could not support the proposal of the Netherlands and Denmark because it would involve a modification of the current universally accepted system which was based on the free choice of the mode of settlement and on consensus. His delegation could not envisage the adoption of any procedure which would depart from the principle of consensus.

66. Mr. NDIAYE (Senegal) said that it was the hope of his delegation that the international community was about to become a society which respected law. It was therefore ready to accept any proposal for the peaceful settlement of disputes, including their compulsory reference to the International Court of Justice, on which two citizens of Senegal had served as judges.

67. During the course of the discussion many concepts had been introduced, although the legal character of some had been challenged. The concept of fundamental equilibrium was widely accepted in domestic law but could give rise to disputes at the international level if a third party was not prepared to accept such a concept. His delegation was ready and willing to consider any suggestions for the improvement of the proposals before the Committee.

68. Mr. MURAKAMI (Japan) said that, as his delegation had pointed out before, a number of provisions or terms in the draft convention were legally imprecise. Because of the potential risk of conflicting interpretations of those provisions, his delegation considered that provision should be made for an effective method for the settlement of disputes through a third party procedure.

69. His delegation therefore supported the proposal submitted by Denmark and the Netherlands. The text proposed by Mozambique and Kenya was too weak and the modes of settlement envisaged in that text would not suffice for dealing with the complex problems to which the future convention would give rise.

The meeting rose at 5.55 p.m.

44th meeting

Tuesday, 5 April 1983, at 10.20 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*concluded*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

New articles and annex (Settlement of disputes) (*concluded*)

1. Mr. MONNIER (Switzerland) said that his delegation fully supported the proposal by Denmark and the Netherlands (A/CONF.117/C.1/L.25/Rev.1/Corr.1) as it was convinced that the draft convention, because of the nature of its provisions, should provide for machinery for the legal settlement of disputes concerning the interpretation or implementation of those provisions. That conviction was strengthened by the fact that the present convention belonged more to the progressive development of law than to the codification of international law. The disparity of views resulting from different State practices and the lack of unanimity which existed affected both the interpretation and application of the convention.

2. Some delegations had stated during the Committee's earlier discussions that resort to judicial settlement was unacceptable in view of the attitude of many States towards the recognition of compulsory jurisdiction as provided for in Article 36, paragraph 2, of the Statute of the International Court of Justice. However, there was an important difference between unilateral recognition of the compulsory jurisdiction of the International Court of Justice operating generally on the basis of Article 36 and recognition of that same Court's jurisdiction specifically in respect of the implementation of the convention. The proposal by Denmark and the Netherlands included an opting-out clause which ensured that no legal settlement would be imposed on any party, since unilateral recourse to the International Court of Justice was not possible without agreement.

3. The representative of Mozambique, in introducing the proposal in document A/CONF.117/C.1/L.58 (43rd meeting) had said that the proposal by Denmark and the Netherlands was unacceptable in that it impaired the fundamental principle of the free choice of means under Article 33 of the Charter of the United Nations. If, however, the proposal of Denmark and the Netherlands was contrary to the principle of freedom of choice, so, too, was the proposal submitted by Mozambique and Kenya, which allowed unilateral initiation of a conciliation procedure. Furthermore, although the principle of the free choice of means was fundamental, there was an even more fundamental principle, namely the obligation on States to settle their disputes by peaceful means, in accordance with Article 21 of the Charter of the United Nations.

4. If parties did not agree to put an end to their dispute on the basis of the recommendations made as a result of the conciliation procedure, the dispute could and probably would degenerate to such an extent that it was doubtful whether the parties would be satisfied with peaceful settlement. In that case the matter could be settled only by the intervention of a third party. The proposal by Denmark and the Netherlands providing for judicial settlement or, in the absence of agreement, arbitration by unilateral request, had the necessary flexibility within the framework of a compulsory procedure. The system was not new, it had been incorporated as recently as December 1982 in the United Nations Convention on the Law of the Sea, having been adopted by consensus. There was therefore no reason why the participants in the Conference should not agree to incorporate the system in the present convention. Arbitration, moreover, had the advantage of flexibility, and of enabling the parties to influence the procedure through the membership of the arbitration tribunal and its rules of procedure.

5. The Committee was faced with the same problem which had faced the States meeting in Vienna in 1968 and 1969, when it had been felt necessary to provide for the settlement of disputes by arbitration or judicial settlement in view of the destructive effects on the treaties in force of the unilateral implementation of the rule of *jus cogens* and the possible impairment of the security of traditional relations. As the present draft convention contained many references to concepts only vaguely outlined and not universally recognized, a similar solution was called for in its case.

6. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had repeatedly drawn the Committee's attention to the fact that many of the terms used in the draft convention were vague, used for want of something better and open to a variety of interpretations. When introducing the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 (43rd meeting), the representative of the Netherlands had identified the main areas of possible dispute. Many more areas could be added to that list, as could specific terms which, in his delegation's view, called for a sound and well-conceived settlement procedure. Such formulae as "connected with the activity of the predecessor State in respect of the territory to which the succession of States relates", or "property to the creation of which the dependent territory has contributed", or "relate exclusively or principally to the territory to which the succession of States relates" left no doubt in his delegation's mind that a compulsory third-party procedure for the settlement of disputes was imperative.

7. States were free to accede to the present convention. If it came into effect, it should be accompanied by such a procedure. Without it, the convention would involve an inherent danger of legal insecurity in the application of the rule of law in international relations.

8. The proposal by Denmark and the Netherlands met that need for a compulsory procedure. States opting out of the jurisdiction of the International Court of Justice would have to submit their dispute to binding arbitration. His delegation therefore supported that proposal. The proposal by Mozambique and Kenya was not adequate for the present convention.

9. Mr. PHAM GIANG (Viet Nam) suggested that the Committee might take as its example Part VI of the 1978 Vienna Convention on Succession of States in Respect of Treaties,[1] which dealt with the settlement of disputes. Methods of settlement had been discussed in depth at the Conference which had drawn up that Convention and the final text had been adopted without a vote. The delegations of Mozambique and Kenya were therefore to be congratulated for having based their proposal so closely on the 1978 Vienna Convention.

10. The Vietnamese delegation fully supported that proposal because it gave the parties freedom to choose the peaceful settlement procedure which best suited them, while at the same time respecting State sovereignty and equality. Such freedom of choice was one of the fundamental principles of that section of international law.

11. A further reason for his delegation's support for the new articles proposed by Mozambique and Kenya was that they constituted a very flexible proposal and reflected the practice of the great majority of States. Furthermore, the proposal covered almost all the procedures usually employed, ranging from consultation and diplomatic negotiation to conciliation and, finally, compulsory judicial settlement, either by arbitration or by the International Court of Justice. Throughout, the joint proposal by Kenya and Mozambique was based on freedom of choice for the parties.

12. His delegation considered the proposal by Denmark and the Netherlands somewhat rigid, as it obliged sovereign States to take certain courses of action. Furthermore, it reflected only one part of international practice, namely, that of a small group of countries which were at the same level of development and had the same political, economic, social and legal systems. The proposal also appeared to run counter to the fundamental principle of freedom of choice, and had a major deficiency in that it left no room for conciliation, an important part of international law which had proved its worth for many years. His delegation was therefore unable to support that proposal.

13. Mr. KIRSCH (Canada) said that the proposals for the settlement of disputes were particularly important since the text of the draft convention contained a number of provisions concerning which disputes might easily arise in view of the various possible interpretations. The text contained many vague expressions and also mentioned a number of concepts which had been variously referred to as principles or rights but in substance were ill-defined and controversial. The Canadian delegation greatly regretted that lack of precision, which was of benefit neither to predecessor States nor to successor States, since it far exceeded what might be regarded as desirable flexibility or even constructive ambiguity.

14. The Committee appeared to have a choice of two systems open to it, settlement by a third party—either the International Court of Justice or arbitration—or settlement by conciliation. His delegation recognized the merits of the conciliation method proposed by Mozambique and Kenya and would have no objection to seeing it as one compulsory stage in the settlement procedure. The problem of that method, however, lay in what it lacked, since it was clear from the text of document A/CONF.117/C.1/L.58 that, if one of the parties was not satisfied with the recommendations of the conciliation commission, then it could reject them and start again from the beginning, however much the situation deteriorated. Furthermore, if one party was satisfied with the status quo, it would have no reason to negotiate seriously, since there was no time limit. The system was not a very efficient one, nor did it necessarily favour the successor State.

15. The Canadian delegation found it difficult to understand why some delegations were opposed to the principle of settlement by a third party when the same delegations had insisted on the inclusion in the convention of the concepts and principles to which he had referred. The system proposed by Denmark and the Netherlands would promote the progressive development of jurisprudence which would define those concepts and eventually transform them into rules of international law. It would be a great loss to international law, therefore, if that proposal were rejected. His delegation fully supported it.

16. It was necessary, in his view, to bear in mind the distinction drawn by the representative of Switzerland between the general recognition of the jurisdiction of the International Court of Justice and its limited recognition in the context of a particular treaty. Reference had also been made by some speakers to the need to respect the freedom of choice of the parties concerned. Such references were ironical, however, in view of the manner in which certain substantive rules had been adopted during the Committee's proceedings. It had also been said that the proposal submitted by Mozambique and Kenya was a compromise, but in fact the parties to the dispute, having complete freedom of choice, were clearly not expected to compromise.

17. Adoption of the proposal by Mozambique and Kenya would be better than having no provision for settlement of disputes in the proposed convention, but it would also mean the loss of the last opportunity to clarify the convention's provisions, as well as of the possibility of their being properly implemented in the future.

18. Mr. PAREDES (Ecuador) said that, while Ecuador was committed to the settlement of disputes in accordance with international law, it considered that the selection of a mechanism for reaching such settlements was a matter for decision by States themselves. His delegation would have difficulty in accepting a text which would have the effect of imposing such mechanisms on States. The proposal submitted by Mozambique and Kenya however, offered the necessary flexibility and had the merit of being in line with

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

the provisions on the same subject contained in the 1978 Vienna Convention.

19. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation favoured the inclusion of provisions for the settlement of disputes arising in connection with the interpretation and application of the future convention. It supported the proposed text submitted by Mozambique and Kenya for a number of reasons.

20. First, the text proposed was similar to the corresponding provisions of the 1978 Vienna Convention. Although the present draft convention was an independent legal text, it was obviously directly connected with the 1978 Convention, since both dealt with the succession of States. Moreover, the 1977-1978 Conference had deliberated at great length on the question of settlement of disputes; the present Conference should utilize that experience instead of resuscitating old arguments.

21. Secondly, the 1978 Vienna Convention had succeeded in dealing with the question of the settlement of disputes in a manner designed to satisfy all States. Both that Convention and the proposal submitted by Mozambique and Kenya provided in the first instance for compulsory consultation and negotiation; if that procedure yielded no results, a compulsory conciliation procedure was foreseen. In addition, any State could declare its willingness to have a dispute submitted for judicial settlement and arbitration to the International Court of Justice. Provision was also made for settlement by common consent, by whatever procedure the parties agreed to.

22. The proposal submitted by Denmark and the Netherlands, on the other hand, would merely lead to an entrenchment of positions. That proposal was therefore unacceptable to his delegation.

23. Mr. BROWN (Australia) welcomed the revised proposal by Denmark and the Netherlands for the inclusion of a new article on the settlement of disputes; the changes made in that proposal demonstrated a desire to reach a generally acceptable solution.

24. His delegation was also interested to note the text proposed by Mozambique and Kenya which was based on corresponding provisions of the 1978 Vienna Convention—an instrument which had as yet attracted few parties.

25. Recalling his delegation's initiative on the peaceful settlement of disputes at the twenty-ninth session of the United Nations General Assembly,[2] he said that Australia had always been a firm supporter of the International Court of Justice as the final recourse in the settlement of international legal disputes. In conventions such as the present one, where the status and content of several of the principles and rights referred to gave rise to diverse interpretations and opinions, there was a particular need to make provision for judicial clarification. He believed the Expert Consultant would agree that the International Court of Justice would be the most able and competent body for the solution of such matters. While both the proposals before the Committee made provision for judicial settlement, his delegation supported the text submitted by Denmark and the Netherlands, because it gave that element greater prominence.

26. Mr. ECONOMIDES (Greece) said that his delegation attached great importance to the recently adopted Manila Declaration on the Peaceful Settlement of International Disputes,[3] which recommended *inter alia* that multilateral conventions should include procedures and machinery for the settlement of disputes that might arise from their interpretations and application. His delegation supported the proposed text submitted by Denmark and the Netherlands, which was in line with the provisions of the Manila Declaration; it endorsed all the arguments advanced in favour of that proposal by the representatives of Switzerland and Canada.

27. Provisions similar to the proposal by Denmark and the Netherlands were a common feature of legal instruments far easier to interpret than the present draft convention, which contained a number of imprecise terms and referred to a number of ill-defined concepts. Machinery for the settlement of disputes was not only desirable but essential if the convention was to be implemented.

28. The text proposed by Mozambique and Kenya did not, in his delegation's view, go far enough, in view of the recommendations contained in the Manila declaration—an important international legal text which had been adopted by consensus.

29. Mr. TEPAVITCHAROV (Bulgaria) welcomed the submission of proposals for the inclusion in the draft convention of provisions concerning the settlement of disputes. It was rather surprising that the International Law Commission's draft contained no such provisions, since the Commission had doubtless been aware that the interpretation of certain articles might give rise to disputes. His delegation would like to hear the view of the Expert Consultant on that question; its understanding was that the Commission had probably not dealt with the matter because it concerned the application, rather than the codification, of international law.

30. In introducing the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 the representative of the Netherlands had noted that provision for binding third-party arbitration would protect smaller nations against the possible use of force by larger Powers. In his delegation's view, the point at issue was not whether or not third-party settlement was acceptable, but rather how such settlement could be effected.

31. Every State should have the possibility of securing settlement of a dispute in the manner of its choosing. Throughout the draft convention, agreement between the parties concerned was recommended as the general rule. Several delegations had stressed the importance of such agreement—a position his delegation had interpreted as an expression of support for the sovereign right of each State, as a subject of international law, freely to negotiate a settlement to a dispute.

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[2] *Official Records of the General Assembly, Twenty-ninth Session, Plenary Meetings*, 2307th meeting, paras. 35 *et seq.*

[3] General Assembly resolution 37/10, annex.

32. In his delegation's view, the proposal by Denmark and the Netherlands was not compatible with Article 33 of the Charter of the United Nations, which regarded arbitration or judicial settlement not as a compulsory procedure, but as a possible complement to the process of negotiation. His delegation was not opposed to compulsory arbitration by the International Court of Justice on an *ad hoc* basis if the parties concerned had agreed to such a procedure, but such arbitration should not be automatic.

33. Compulsory third-party settlement could also lead to conflicting interpretations of Article 36 of the Statute of the International Court of Justice, which specified the Court's jurisdiction. Nothing in either the Charter or the Statute could be interpreted as obliging a Member State to submit to compulsory settlement by the International Court of Justice whenever the other party felt that a compulsory award, even a negative one, would be expedient, for whatever reason.

34. Experience had clearly demonstrated that the cases in which the International Court of Justice had made a positive contribution to the interpretation of international law were precisely those which had been submitted by mutual agreement of the parties concerned.

35. It should also be noted that the Conference was a plenipotentiary body dealing with the codification of international law; it was not concerned with the settlement of disputes as such. He stressed the importance of accurate reflection of the position of the various Governments on the issue. It was difficult to see how the Manila Declaration could be invoked as an argument for or against binding third-party settlement.

36. For the reasons given, his delegation would support the new articles proposed by Mozambique and Kenya; it was unable, as a matter of principle, to accept the proposal by Denmark and the Netherlands.

37. Mr. BEDJAOUI (Expert Consultant) said that the International Law Commission had been well aware that the present draft convention, more than other codification drafts, required an effective procedure for the settlement of disputes. However, the Commission had simply not had the time to formulate the necessary provision.

38. In his view, the primary concern should be that the procedure developed was an effective one. If it were to focus on the International Court of Justice, which he felt was an underutilized institution, he would understandably be even happier.

39. Several delegations had expressed opposition to compulsory judicial settlement. The proposal submitted by Denmark and the Netherlands had the merit of going beyond the 1978 Vienna Convention—an approach which he welcomed in view of the specific nature of the draft convention. He noted that paragraph 1 referred to "parties to the dispute", whether or not such parties were parties to the future convention. In addition, the text omitted the conciliation phase—a phase to which many delegations attached importance.

40. The text of paragraph 2 was modelled on article 66 of the 1969 Vienna Convention on the Law of Treaties[4] but the two cases were not analogous. In the case of the 1969 Convention, the question had been to determine whether or not a rule was a subject of *jus cogens*; in the case of the present draft convention, it would be a matter of taking a case to the International Court of Justice to determine whether an agreement had been concluded in accordance with certain principles—the nature of the principles themselves would not be at issue.

41. Paragraph 3 of the proposed new article provided for the possibility of reservations; he was not sure that the results of the system would be any more effective than the procedure laid down in the proposal submitted by Mozambique and Kenya, which had the virtue of flexibility.

42. Mr. MAAS GEESTERANUS (Netherlands) said that he had only two comments to make following an extensive debate during which all the various arguments for and against—both genuine arguments and otherwise—appeared to have been put forward.

43. His first observation concerned the remark, made repeatedly during the discussion, that it was desirable to allow the parties to a dispute freedom of choice regarding means of settlement. In fact, the freedom in question—in the form in which it had been asserted—was the freedom of the stronger party to refuse the settlement of the dispute.

44. His second observation concerned the suggestion made by the representative of Senegal at the previous meeting that a compromise formula should be sought in order to reconcile the two proposals at present before the Committee, namely, that contained in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 and that in document A/CONF.117/C.1/L.58. On behalf of the sponsors of the first of those proposals, he could give a response to that suggestion.

45. On the basis of the statement just made by the Expert Consultant, the application of the system of recourse to the compulsory jurisdiction of the International Court of Justice, or to compulsory arbitration, might perhaps be limited exclusively to those matters in the present convention which raised the question of the existence, or otherwise, of a rule of *jus cogens*. For all other matters, the conciliation procedure could be deemed adequate.

46. Mr. KOLOMA (Mozambique) expressed the thanks of the sponsors of the proposal in document A/CONF.117/C.1/L.58 for the comments made on that text and their satisfaction at the widespread support shown for it. Some of the delegations which had opposed the proposal had stressed the need for an effective instrument for the settlement of disputes on the application and interpretation of the draft convention and had held that provision for compulsory jurisdiction of the International Court of Justice constituted the best solution for the settlement of such disputes.

47. That view underestimated completely the effectiveness of non-judicial means of settlement of international disputes. His delegation fully recognized the need for an effective instrument but disagreed entirely with the assertion that such an effective instrument was to be found only in a clause providing for the compul-

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[4] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

sory jurisdiction of the International Court. The effectiveness of non-judicial means of settlement was in fact fully confirmed by widespread State practice: States had so far resorted much more frequently to such means of settlement of their disputes than to the International Court.

48. The arguments put forward in favour of the compulsory jurisdiction of the International Court had failed to convince his delegation. He stressed, however, that the proposal made by his delegation and that of Kenya did not in any way exclude the possibility of recourse to the Court; it simply left States the freedom to have such recourse by common consent.

49. In conclusion, he indicated that the sponsors of the proposal in document A/CONF.117/C.1/L.58 maintained their position and requested a vote on their proposal.

50. The CHAIRMAN put to the vote the proposal for a new article dealing with the settlement of disputes which had been submitted by Denmark and the Netherlands (A/CONF.117/C.1/L.25/Rev.1/Corr.1).

The proposal was rejected by 36 votes to 21, with 10 abstentions.

51. The CHAIRMAN said that, following the rejection of the proposal for a new article submitted by Denmark and the Netherlands, the proposal by those same delegations for an annex to the convention (A/CONF.117/C.1/L.57) had now lost its purpose and he would therefore not put it to the vote.

52. He next invited the Committee to vote on the proposal for new articles and an annex, also dealing with the settlement of disputes, which had been submitted by Mozambique and Kenya (A/CONF.117/C.1/L.58).

The proposal was adopted by 50 votes to 2, with 13 abstentions.

53. Mr. MAAS GEESTERANUS (Netherlands), speaking in explanation of vote, said that his delegation had voted against the proposal by Mozambique and Kenya because, in its view, those provisions did not afford the necessary, and adequate, protection of the interests of the parties concerned.

54. Mr. MONNIER (Switzerland) explained that his delegation had voted in favour of the proposal by Denmark and the Netherlands. Following the rejection of that proposal, his delegation had nevertheless been able to vote in favour of the proposal in document A/CONF.117/C.1/L.58 because that proposal made provision for compulsory conciliation, as well as for a form of third-party settlement of disputes.

55. The system which the Committee had just approved constituted a bare minimum machinery for the settlement of disputes on the interpretation and application of the draft convention. He would almost say that it constituted an inadequate minimum. His delegation had nevertheless voted in favour of that system because it contained the element of third-party settlement.

56. He welcomed the suggestion by the Netherlands representative that an attempt should be made to develop a compromise formula which would retain the method of judicial settlement and compulsory arbitration for the settlement of disputes relating to certain matters. He was convinced that a compromise formula on those lines would enhance the prospects of acceptance of the whole convention by many countries, including his own.

57. Mr. OESTERHELT (Federal Republic of Germany) explained that his delegation had abstained in the vote on the proposal in document A/CONF.117/C.1/L.58 for the sole reason that, in its view, that proposal did not constitute an adequate solution in the case of the present draft convention. The reasons for that position had been stated by his delegation at the previous meeting during the discussion of the subject of provisions concerning the settlement of disputes. His delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 for the reasons already given in its earlier statements.

58. Mr. SKIBSTED (Denmark) said that his delegation had voted against the proposal in document A/CONF.117/C.1/L.58 because it considered that the present draft convention needed an effective and compulsory provision on the settlement of disputes. In its view, the text of the draft convention contained references to many imprecise concepts which were not unanimously accepted by the international community. The reference to those matters made it absolutely essential to include in the text an effective clause concerning the settlement of disputes. The system proposed in the above-mentioned document would not be of assistance in solving disputes arising in connection with the interpretation and application of the present draft convention. The wording which the Commission had just adopted would not make for effectiveness in that regard.

59. Mr. DOS SANTOS E S. BRAVO (Angola) said that his delegation had voted against the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 because practice had shown that the system of compulsory jurisdiction of the International Court of Justice was incompatible with the sovereignty of States. It was significant that out of over 150 States Members of the United Nations, only 46 had accepted the optional clause providing for the compulsory jurisdiction of the International Court of justice under Article 36, paragraph 2, of the Statute of the Court. There could thus be no doubt that the overwhelming majority of members of the Organization were not in favour of the compulsory jurisdiction of the International Court.

60. Mr. MOCHI ONORY di SALUZZO (Italy) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 as it established machinery for the settlement of disputes that was suited to a convention such as the present one, which contained many vague terms whose interpretation could give rise to disputes.

61. His delegation had abstained in the vote on the proposal in document A/CONF.117/C.1/L.58 because the provisions it contained were insufficient for the purpose of settlement of the disputes which might arise in connection with the application of interpretation of the draft convention.

62. Mr. PASTOR RIDRUEJO (Spain) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 for the reasons it had already given at the previous meeting in the course of the discussion in the Committee on the question of settlement of disputes.

63. Following the rejection of that proposal, his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.58, despite its inadequacy for the intended purpose, because it had at least the merit of restricting in some degree the freedom of choice of means of settlement by making provision for compulsory conciliation.

64. Mr. KÖCK (Holy See) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 because it strongly believed that compulsory jurisdiction or arbitration, constituted the most efficient, and in some cases in the last resort the only possible, way to secure a final, peaceful settlement of an international dispute.

65. Since, however, that proposal had not been adopted—a fact which his delegation viewed as a retrograde step in the progressive development of international law—his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.58, in the belief that it was better to have in the draft convention some procedure for the settlement of disputes—deficient though it might be—than to have no procedure at all.

66. Mr. DALTON (United States of America) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 because it embodied the right approach to the question of settlement of disputes for the present draft convention.

67. Following the rejection of that proposal, his delegation had also been able to vote in favour of the proposal in document A/CONF.117/C.1/L.58 simply because it deemed it marginally preferable to have some provision on the settlement of disputes in the convention that to have nothing at all. The provisions contained in the proposal just adopted were, in fact, quite inadequate for the intended purpose and he believed that their inclusion in the text could well affect the attitude of many countries towards the convention as a whole.

68. Mr. GÜNEY (Turkey) said that his delegation had voted against the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1, and in favour of the proposal in document A/CONF.117/C.1/L.58, for the reasons indicated in its statement made at the 43rd meeting of the Committee of the Whole.

69. Mr. ECONOMIDES (Greece) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1. It had, however, abstained in the vote on the proposal in document A/CONF.117/C.1/L.58 because those provisions were inadequate for dealing with the difficult problems of interpretation and application to which the convention would give rise.

70. Mr. SUCHARIPA (Austria) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 for the reasons it had given at the previous meeting. Following the rejection of that proposal, it had voted in favour of the proposal in document A/CONF.117/C.1/L.58 for reasons similar to those given by the delegation of Switzerland.

71. The text adopted by the Committee of the Whole required improvement in order to make it suitable for inclusion in the draft convention. He hoped that such improvement might be effected at a later stage.

72. Mr. THIAM (Senegal) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 and had subsequently voted in favour of the proposal in document A/CONF.117/C.1/L.58. He regretted that it had not been possible to develop a compromise formula to reconcile the two proposals before the vote just taken. His delegation still saw a need for such a compromise formula.

73. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 because it was generally in favour of such a provision on the compulsory settlement of disputes. Such a provision was particularly important in the present convention, for the reasons which his delegation had already explained in the course of the debate.

74. Upon the rejection of that proposal, his delegation had found it necessary to vote in favour of the one contained in document A/CONF.117/C.1/L.58 because the Committee did not have before it any other proposal on the subject of the settlement of disputes. He wished to stress, however, the inadequacy of the provisions in the text just adopted, particularly for the present draft convention.

75. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had voted against the proposal in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 essentially because it believed that the system of compulsory jurisdiction was incompatible with the sovereignty of States and with their freedom to choose the means of settlement of their disputes and their freedom to accept or not the jurisdiction of the International Court of Justice.

76. Should a dispute arise with regard to the interpretation or application of the provisions of the present draft convention, that dispute should be dealt with by means of conciliation and negotiation before any question arose of an agreement between the parties to refer the case to the International Court of Justice. It was for those reasons that his delegation had voted in favour of the proposal in document A/CONF.117/C.1/L.58.

New article (A/CONF.117/C.1/L.60) (*concluded*)

77. Mr. FAYAD (Syrian Arab Republic) said that, in the light of discussions with a number of delegations, his delegation wished to revise the text of the proposal it had submitted in document A/CONF.117/C.1/L.60. The revised text would read:

> "No provision in the present convention is considered as affecting the right of any people represented by an organization recognized by the United Nations and any international regional organization

to request measures to safeguard their rights in the light of the right of self determination and the principle of permanent sovereignty of every people over its wealth and natural resources."[5]

78. He requested that his delegation's proposal, as thus revised, should be voted upon by the Committee.

79. Mr. KOREF (Panama) asked the representative of the Syrian Arab Republic to whom he envisaged that the request referred to in his delegation's proposal might be addressed.

80. Mr. FAYAD (Syrian Arab Republic) said that an organization which was recognized by both the United Nations and an international regional organization because it represented a people could make such a request to the United Nations or to any State which had a direct relationship with the territory which that organization represented. In fact, such an organization could addresss the request to the international community, either collectively or individually.

81. Mr. ROSENSTOCK (United States of America) said that, even as revised, the proposal of the Syrian Arab Republic remained unacceptable to his delegation. In his view, it did not constitute a significant step towards a middle ground. It was completely irrelevant to the present draft convention and its adoption would affect the attitude of his delegation towards the convention as a whole. It was unacceptable, moreover, on two specific grounds. First, it related only to the rights of some people to self-determination whereas, under the Charter of the United Nations, all peoples had an equal right to self-determination. Second, it arrogated special rights for certain "organizations", which was a very vague term.

82. Mr. ECONOMIDES (Greece) said that his delegation was not prepared to take an immediate decision on the revised Syrian proposal. When the proposal had first been introduced, he had had the impression that it was essentially a safeguard clause. However, on further consideration he perceived that that was not the case. If a provision of that nature was to be inserted in the draft convention it must be formulated as a true safeguard clause, similar to articles 5 and 6. That would require the phrase "as affecting" to be replaced by "as prejudging". In any case, he would wish to see the revised proposal in writing.

83. Mr. AL-KHASAWNEH (Jordan) said that his delegation would have to vote against the proposal of the Syrian Arab Republic. The whole idea of that proposal was irrelevant to the draft convention and a court responsible for interpreting the proposed article would have difficulty in understanding the phrase "request measures to safeguard".

84. The formulation was more appropriate to a United Nations resolution than to a norm of positive law. The provision might well lead to *a contrario* arguments to the effect that organizations not recognized by the United Nations were deprived of the right to request safeguard measures—which would constitute infringement of the equal right of all peoples to self-determination.

85. Mr. NATHAN (Israel) referred to the statement he had made at the 42nd meeting of the Committee when the Syrian proposal had first been introduced. In his delegation's view the revised proposal was just as irrelevant to the framework and contents of the draft convention and was therefore totally unacceptable.

86. Mr. IRA PLANA (Philippines) said that the revised Syrian proposal was substantially different from the text in document A/CONF.117/C.1/L.60. As he had already stated, the Philippines adhered to the formula used by the United Nations which specifically referred to national liberation movements as such. His delegation's decision would be guided accordingly.

87. Mr. MOCHI ONORY di SALUZZO (Italy) observed that in the revised Syrian proposal the expression "national liberation movements" had been replaced by "any people represented by an organization". He asked the Expert Consultant what the legal scope of the latter formulation would be. Before commenting on the substance of the revised proposal, his delegation would like to see the latter in writing.

88. Mr. KÖCK (Holy See) asked the Expert Consultant whether the phrase "affecting the right . . . to request that measures be taken" should be construed as referring merely to the right to make such a request or to the right to have appropriate measures taken.

89. The CHAIRMAN announced that the representative of the Secretary-General of the United Nations was present to reply to the question which the representative of the Netherlands had raised at the 42nd meeting of the Committee of the Whole.

90. Mr. MAAS GEESTERANUS (Netherlands) recalled that his question had been whether the United Nations could take protective measures if a request that it do so was addressed to it, in accordance with the proposal under consideration, by an organization recognized by the United Nations and any international regional organization.

91. Mr. FLEISCHHAUER (Legal Counsel of the United Nations representing the Secretary-General) said that it was difficult to give a general answer to the question. There was certainly no rule in the Charter of the United Nations or in international law which would totally bar the United Nations from replying positively to a request such as was envisaged in the proposal of the Syrian Arab Republic. However, such a request would have to be examined and decided upon by the competent organ in each individual case.

92. Mr. BEDJAOUI (Expert Consultant) referred to the views he had expressed at the 43rd meeting on the text of the proposal submitted by the Syrian Arab Republic. He observed that in the revised proposal the term "national liberation movements" had been replaced by "any people represented by an organiza-

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[5] Subsequently issued under the symbol A/CONF.117/C.1/L.60/Rev.1.

tion". He had been asked whether the right of such an organization was limited to the making of a request or whether the organization had right also to action in response to that request. He read the text simply in the terms in which it had been submitted by its sponsor. He took the concluding phrase to mean that all peoples enjoyed the right of self-determination and were entitled to benefit from the protection which might be afforded by application of the principle of permanent sovereignty over natural resources.

93. The CHAIRMAN suggested, in view of the desire of a number of delegations to see the revised proposal of the Syrian Arab Republic in writing,[6] that action on the proposal should be deferred.

It was so decided.

The meeting rose at 12.35 p.m.

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[6] Subsequently circulated as document A/CONF.117/C.1/L.60/Rev.1, which was not, however, put to a vote in the Committee of the Whole.

A draft resolution on the question (A/CONF.117/L.1) was submitted by the Syrian Arab Republic to the Conference at its 10th plenary meeting, on 7 April 1983, when it was adopted by 45 votes to 1, with 25 abstentions. For the text of the draft resolution, see volume II, section F.

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